United States Court of Appeals for the Second Circuit

APPENDIX

76-7292, 7391, 7449, 7450,
76-7466, 7485, 7506

B P/S

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

GEORGE ARTHUR, *et al.*,
Plaintiffs-Appellees,
vs.
EWALD P. NYQUIST, *et al.*,
Defendants-Appellants.

Complete title of all parties printed on inside of cover.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

JOINT APPENDIX

VOLUME I — Pages 1-592

UNITED STATES COURT OF APPEALS
FILED
APR 8 1977
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SECOND CIRCUIT

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GEORGE ARTHUR, NORMAN GOLDFARB, WILLIAM and WILHELMINA P. SEALES, JOHN MEDIGE, and THE CITIZENS COUNCIL FOR HUMAN RELATIONS, INC. and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, BUFFALO BRANCH,

Plaintiffs-Appellees,

vs.

EWALD P. NYQUIST, individually and as Commissioner of Education of the State of New York, THE BOARD OF REGENTS OF THE STATE OF NEW YORK, THOMAS M. BLACK, CARL H. PFORZHEIMER, JR., ALEXANDER J. ALLAN, JR., JOSEPH C. INDELICATO, M.D., KENNETH B. CLARK, HAROLD E. NEWCOMB, WILLARD A. GENRICH, EMLYN I. GRIFFITH, GENEVIEVE S. KLEIN, WILLIAM JOVANOVICH, MARY ALICE KENDALL, JORGE L. BATISTA, LOUISE E. YAVNER, MARTIN C. BARELL and LAURA BRADLEY CHODOS, individually and as Members of the Board of Regents of the State of New York, JOSEPH MANCH, individually and as Superintendent of Schools of the City of Buffalo, EUGENE T. REVILLE, individually and as Superintendent of Schools of the City of Buffalo, THE BOARD OF EDUCATION OF THE CITY OF BUFFALO, FLORENCE E. BAUGH, SAMUEL E. SACCO, JOSEPH E. MURPHY, MOZELLA RICHARDSON, DR. MATT A. GAJEWSKI, LOUIS C. BENTON, MICHAEL J. RYAN, JOSEPH D. HILLERY and MARILYN P. KAVANAGH, individually and as Members of the Board of Education of the City of Buffalo, STANLEY M. MAKOWSKI, Mayor of the City of Buffalo, and DELMAR L. MITCHELL, RAYMOND LEWANDOWSKI, GUS FRANCZYK, ALFREDA W. SLOMINSKI, WILLIAM J. DAURIA, JOSEPH S. FORMA, MICHAEL McCARTHY, WILLIAM B. HOYT, GEORGE K. ARTHUR, RICHARD F. OKONIEWSKI, HORACE C. JOHNSON, JOHN A. RAMUNNO, ANTHONY M. MASIELLO, DANIEL J. HIGGINS and WILLIAM A. PRICE, constituting the members of the COMMON COUNCIL OF THE CITY OF BUFFALO,

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CIVIL DOCKET

Docket Entries.

UNITED STATES DISTRICT COURT

Jury demand da

D. C. Form No. 106 Rev.

TITLE OF CASE	
	For plaintiff:
GEORGE ARTHUR, NORMAN GOLDFARB, WILLIAM AND WILHELMINA P. SEALES, JOHN MEDIGE, and THE CITIZENS COUNCIL FOR HUMAN RELATIONS, INC. and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, BUFFALO BRANCH,	
v.	
EWALD P. NYQUIST, COMMISSIONER OF EDUCATION, THE BOARD OF REGENTS OF THE STATE OF NEW YORK, JOSEPH MANCH, SUPERINTENDENT OF SCHOOLS OF THE CITY OF BUFFALO, THE BOARD OF EDUCATION OF THE CITY OF BUFFALO, STANLEY M. MAKOWSKI, MAYOR OF THE CITY OF BUFFALO, and DELMAR L. MITCHELL, RAYMOND LEWANDOWSKI, GUS FRANCZYK, ALFREDA W. SLOMINSKI, WILLIAM J. DAURIA, JOSEPH S. FORMA, MICHAEL McCARTHY, WILLIAM B. HOYT, GEORGE K. ARTHUR, RICHARD F. OKONIEWSKI, HORACE C. JOHNSON, JOHN A. RAMUNNO, ANTHONY M. MASIELLO, DANIEL J. HIGGINS and WILLIAM A. PRICE, constituting the members of the COMMON COUNCIL OF THE CITY OF BUFFALO.	For defendant: ~~Donald L. Jackson~~ ~~494 Masten Avenue~~ ~~Buffalo, New York 14209~~ Louis J. Lefkowitz Nyquist & Bd. R Attorney General of the State of The Capitol Albany, New York 12224 ~~Anthony Manguso~~ [illegible] Corporation Counsel [illegible] 1100 City Hall 65 Niagara Square Buffalo, New York 14202

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk	6-26-72 JUN 28	# 7049 1972	15 00	
			Treasurer of the U.S.		
J.S. 6 mailed	Marshal				15 00
		1/22/74	#12235	$5 00	
Basis of Action: Civil Rights	Docket fee	1/24/74	Trans USC/D32		$5 00
Declaratory judgment & injunctive relief	Witness fees				
Class Action Action arose at:	Depositions				

GEORGE ARTHUR, NORMAN GOLDFARB, WILLIAM and WILHELMINA P. SEALES, JOHN MEDIGE, and THE CITIZENS COUNCIL FOR HUMAN RELATIONS, INC. and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, BUFFALO BRANCH

Plaintiffs

-vs-

Ci

EWALD P. NYQUIST, individually and as Commissioner of Education of the State of New York, THE BOARD OF REGENTS OF THE STATE OF NEW YORK, THOMAS M. BLACK, CARL H. PFORZHEIMER, JR., ALEXANDER J. ALLAN, JR., JOSEPH C. INDELICATO, M.D., KENNETH B. CLARK, HAROLD E. NEWCOMB, WILLARD A. GENRICH, EMLYN I. GRIFFITH, GENEVIEVE S. KLEIN, WILLIAM JOVANOVICH, MARY ALICE KENDALL, JORGE L. BATISTA, LOUIS E. YAVNER, MARTIN C. BARELL and LAURA BRADLEY CHODOS, individually and as Members of the Board of Regents of the State of New York, JOSEPH MANCH, individually and as Superintendent of Schools of the City of Buffalo, EUGENE T. REVILLE, individually and as Superintendent of Schools of the City of Buffalo, THE BOARD OF EDUCATION OF THE CITY OF BUFFALO, FLORENCE E. BAUGH, SAMUEL E. SACCO, JOSEPH E. MURPHY, MOZELLA RICHARDSON, DR. MATT A. GAJEWSKI, LOUIS C. BENTON, MICHAEL J. RYAN, JOSEPH D. HILLERY and MARILYN P. KAVANAGH, individually and as Members of the Board of Education of the City of Buffalo, STANLEY M. MAKOWSKI, Mayor of the City of Buffalo, and DELMAR L. MITCHELL, RAYMOND LEWANDOWSKI, GUS FRANCZYK, ALFREDA W. SLOMINSKI, WILLIAM J. DAURIA, JOSEPH S. FORMA, MICHAEL McCARTHY, WILLIAM B. HOYT, GEORGE K. ARTHUR, RICHARD F. OKONIEWSKI, HORACE C. JOHNSON, JOHN A. RAMUNNO, ANTHONY M. MASIELLO, DANIEL J. HIGGINS and WILLIAM A. PRICE, constituting the members of the COMMON COUNCIL OF THE CITY OF BUFFALO

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Docket Entries.

Jury demand date:

D. C. Form No. 106 Rev.

Civ-1972-325

TITLE OF CASE

GEORGE ARTHUR, NORMAN GOLDFARB, WILLIAM AND WILHELMINA P. SEALES, JOHN MEDIGE, and THE CITIZENS COUNCIL FOR HUMAN RELATIONS, INC. and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, BUFFALO BRANCH,

v.

EWALD P. NYQUIST, COMMISSIONER OF EDUCATION, THE BOARD OF REGENTS OF THE STATE OF NEW YORK, JOSEPH MANCH, SUPERINTENDENT OF SCHOOLS OF THE CITY OF BUFFALO, THE BOARD OF EDUCATION OF THE CITY OF BUFFALO, STANLEY M. MAKOWSKI, MAYOR OF THE CITY OF BUFFALO, and DELMAR L. MITCHELL, RAYMOND LEWANDOWSKI, GUS FRANCZYK, ALFREDA W. SLOMINSKI, WILLIAM J. DAURIA, JOSEPH S. FORMA, MICHAEL McCARTHY, WILLIAM B. HOYT, GEORGE K. ARTHUR, RICHARD F. OKONIEWSKI, HORACE C. JOHNSON, JOHN A. RAMUNNO, ANTHONY M. MASIELLO, DANIEL J. HIGGINS and WILLIAM A. PRICE, constituting the members of the COMMON COUNCIL OF THE CITY OF BUFFALO,

Plaintiff

Richard Griffin, Esq.
2300 Erie County Bank Building
Buffalo, New York 14202

Peter Bienstock, Esq.
Puerto Rican Legal Defense
& Education Fund, Inc.
95 Madison Avenue
New York, New York 10016

Defendants

Robert D. Stone, Esq.
State Education Department
The Capitol
Albany, New York 12234

Louis J. Lefkowitz, Esq.
65 Court Street
Buffalo, New York 14202
Law Coun, Albany

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Corporation Counsel
1100 City Hall
Buffalo, New York 14202

David Blasband, Esq.
110 East 59th Street
New York, New York 10002

Norman Rosenberg, Esq. Wm Price.
SUNYAB- North Campus
Amherst, N.Y. 14260

Amicus Curiae
Paul E. Klein, Esq. Also Teachers Federation
N.Y. Educators Association
50 Wolf Road
Albany, N.Y. 12205

STATISTICAL RECORD	COSTS	
J.S. 5 mailed	Clerk	
J.S. 6 mailed	Marshal	
Basis of Action: Civil Rights	Docket fee	
Declaratory judgment &	Witness fees	
Injunctive relief Class Action Action arose at:	Depositions	

Docket Entries.

Civ-1972-325 George Arthur, et al. v. Ewald P. Nyquist, etc., et al.

DATE	PROCEEDINGS	Date Ord Judgment
1972		
June 26	Filed Complaint (no process to issue)	
26	" Order to Show Cause why an order should not be entered allowing Pltfs'.to take depositions, etc.-Henderson, J ret. 7/3/72 ;7/10/72-granted	F-129
26	JS 5 made	
27	Filed Motion of Donald L. Jackson for permission to file Amicus Curia in behalf of Defts.-ret.7/3/72 ;7/10/72 denied	
July 14	" Order granting Pltfs'.application to effect service of summons & complaint and granting Pltfs'.application to commence taking of depositions, etc.-Henderson, J (notice & copy to Messrs.Schwartz, Lefkowitz,Alb.,& Manguso)	F-130
Aug. 3	" Defts'.,Nyquist & Bd.of Regents, Affidavit & Notice of Motion to Dismiss Complaint-ret.8/28/72 -adj.9/18/72 ;9/25/72;10/16/72 - /denied	
3	" Pltfs'.Notice of Deposition	
7	" Defts.,Joseph Manch & Bd.of Educ.,City of Bflo.,Notice of Motion to dismiss class action, to dismiss action against Defts.,Manch&Bd.of Educ.,City of Bflo.,& for an order joining certain parties-ret.8/28/72 -adj.9/18/72 ;9/25/72;10/16/72-denied	
Sept.13	" Deposition of Doctor Joseph Manch (notice to attys.)	
1973		
Feb. 27	" Order to Show Cause why an order should not be granted directing Dept of HEW to make available to pltfs copies of studies etc. Henderson DJ ret. 3/12/73-Adj. 2 weeks	F-1
Mar. 1	" /Defts. Notice of Motion for order granting League of Women Voters to file a brief as amicae curiae etc. ret. 3/19/73 ; adj. 1 week 3/26/73	
26	Atty. Francis J. Offermann, Jr. adv. Court that amicus curiae sought by League of Women Voters has no opposition and Court granted motion for order granting League of Women Voters to file a brief as amicas curias. On motion by Atty. Richard F. Griffin, concerning the order to show cause, for a 30 day adjournment to study material furnished by HEW, the Court adjourned the show cause order to 4/30/73-no appearance	
Apr. 2	Filed Answer of State defendants	
5	" Order that Leagues of women Voters of Amherst, et al be granted Leave to file a brief as amicae curiae etc. Henderson DJ Notice & Copies Messrs. Lefkowitz, Manguso & Offermann Fallon	F-1
20	" Pltfs. Notice to take deposition of Deft. Arnold Gardner on 5/30/73	
May 9	" Continuation Deposition of Dr. Jos. Manch taken 4/6/73	
14	Court ordered that Govt. furnish HEW, Schedule A documents at Buffalo for review by attys. for Pltf. Court adjourned argument on HEW, Schedule B documents to 5/29/73	
16	Filed Order that HEW make available for inspection by attys. for pltfs. the material itemized in attachment A etc. & that attys. be heard by Court on 5/29/73 as to matters set forth in attachment B. and any papers submitted by HEW shall be furnished to attys for moving party on or before 5/21/73. Henderson DJ Notice & copies Jackson, Lefkowitz & Manguso	F-14
25	" USA response to Order to Show Cause	
29	Order to show cause adj. 3 weeks ; adj. 7/16/73 ; after oral argument, Court reserved	
July 25	Filed Response of the US to order for production of documents.	

Docket Entries.

George Arthur, Norman Goldfarb et al. v. Ewald P. Nyquist et al

D. C. 110 Rev. Civil Docket Continuation 6

DATE	PROCEEDINGS	Date Order Judgment N
1973		
Nov. 19	Filed order that Govt. make available to Pltfs. the items listed in Footnote #1 of opinion Nos. 2, 3, 4 & 8 and also provide the Ct. items 7 & 9-Henderson, DJ Notice & copies to Messrs. Griffin, Schwartz, Jay, Lefkowitz, Manguso, Elfvin.	F-146
27	Filed Pltfs. notice to take deposition of Arnold B. Gardner on 12-18-73.	
Dec. 12	Filed order to show cause why an order should not be granted directing Deft. Ewald P. Nyquist et al to appear upon a deposition upon oral argument ret. 12-17-73-Henderson, DJ Notice to Richard F. Griffin, Atty. Gen. City of Bflo. Jean M. Coon & Corp. Counsel City of Bflo.	F-1
18	" affidavit of Defts. in opposition to the motion of Pltf. seeking to take oral depsotions of Deft. Nyquist & 2 named employees.	
17	Ct. ordered that interrogatories be served instead of depositions by Pltf.	
1974		
an. 16	Filed deposition of Arnold B. Gardner taken 12-18-73.	
16	" Govt's. Notice of Appeal (copy mailed to Messrs. Griffin, Schwartz, Jay, Lefkowitz (Mrs. Coon), & Manguso, and to Clerk, CCA with copy of docket entries) [illegible]	
22	" Pltfs'. Notice of Appeal (copy mailed to Messrs. Lefkowitz (Mrs. Coon) and Manguso, U.S. Atty. and to Clerk, CCA with copy of docket entries)	
30	" Plaintiffs' Interrogatories	
eb. 19	" Stipulation listing papers to be included in record on appeal	
20	Pertinent original papers, docket entries and Clerk's certificate mailed to Clerk, CCA	
Mar. 8	Filed Deposition transcript of Eugene T. Raville taken 1-24-74	
8	" Deposition transcirpt of Arnold B. Gardner taken 1-24-74	
20	" Pltfs. motion to add party defts. the Common Council of the City of Buffalo & its members, ret. 4-8-74	
Apr. 5	Filed Deft. affidavit in relation to motion of Pltfs. to add deft.	
8	The Ct. directed Pltf. to prepare an order adding Party Deft.	
26	Pertinent original papers returned from CCA	
29	Filed certified copy of Joint Motion to dismiss appeals and remand to District Court with directions to vacate as moot District Court's decision and order of 11/19/73, with approval of Paul R. Hays, U.S.C.J. endorsed thereon	
30	Filed order that Common Council of City of Bflo. & its members & Stanley Makowski & that they shall serve their answers within 20 days-Curtin, DJ. Notice & copies to Richard Griffin, Jean Coons & Anthony Manguso	
une 13	Filed Pltfs. supplemental interrogatories to defts.	
17	Return date for briefs. adj. to 7-1-74	
uly 16	Filed defts., Joseph Manch, Bd. of Ed. & Common Council answer to complain	
18	Filed Pltfs. notice to take deposition of Dr. Alice C. Brown & produce records on 7-24-74.	
25	Filed deposition of Anthony J. Girard taken on 6-14-74	
Aug. 12	Filed Pltfs. request to defts. to stipulate.	
12	" Pltfs. witness list.	
Sept. 5	" deposition of James M. Connors, Joseph Muscarella & Alice C Brown taken on 7-24-74	
30	Filed Deft., Thomas D. Sheldon, Deputy Commissioner etc. answers to interrogatories.	
ct. 1	Filed stipulation of facts.	

Docket Entries.

DATE	PROCEEDINGS	Date Ord Judgment
1974		
Oct. 1	Trial (non-jury) begins	
2	Trial continues.	
3	Trial continues.	
4	Trial continues/	
8	Trial continues.	
10	Trial continues.	
11	Filed Ct. Stenos. record of proceedings of 10-1-74.	
16	" Ct. Stenos. record of proceedings of 10-2-74.	
16	" Ct. Stenos. record of proceedings of 10-3-74.	
16	" Ct. Stenos. record of proceedings of 10-4-74.	
16	Filed Deft., Nyquist, motions and proof	
17	Trial cont.	
18	Filed Stenos transcript of proceedings of 10-8-74	
18	" Stenos transcript of proceedings of 10-10-74.	
18	Trial continued.	
22	Trial continued.	
23	Trial continued.	
Nov. 1	Filed transcript of proceedings of 10-17-74.	
1	" transcript of proceedings of 10-18-74.	
1	" transcript of proceedings of 10-22-74	
1	" transcript of proceedings of 10-23-74.	
Dec. 31	Filed order adj. dates briefs are due, pltf. brief due 1-13-75; deft. 3-3-75 & pltf. 3-17-75-Curtin, DJ Notice & copies to Herman Schwartz, Jean Coon, Anthony Gregory, Eugene Panfil & Richard Griffin	F-15
1975		
Jan. 13	Filed Pltfs' post trial brief.	
13	" Pltfs' post trial brief.	
13	Return date for pltf's brief. No appearance for pltf.	
Feb. 27	Filed letter to Judge Curtin dated 2-25-75 from Jean M. Coon asking for more time.	
28	Filed order granting application of Atty. Gen. for more time to file briefs. Deft. may be filed on 3-17-75 pltfs. reply 3-31-75-Curtin, DJ Notice & copies to Herman Schwartz. Ed. Koren, Richard F. Griffin, Anthony Gregory, Jean Coon, Leslie Foschio	F-16
Mar. 17	Briefs. due. No appearances. Briefs have been received.	
17	Filed post trial brief on behalf of defts. Nyquist & Bd. of Regents.	
19	Filed post trial brief on behalf of City defts.	
Apr. 1	Filed letter to Judge Curtin dated 3-28-75 from Herman Schwartz re extension of time to file brief.	
10	Filed Pltfs. reply brief.	
11	Filed Pltfs. reply brief.	
7	Return date for pltfs. brief. Adj. to 4-14-75. submitted.	
16	Filed letter from HEW to Dr. Joseph Manch dated 1-3-75 re Schools 50 & 24.	
May 28	Filed Defts., Ewald B. Nyquist & Bd. of Regents proposed findings of fact.	
27	Ret. date for proposed findings of fact. adj. to 6-2-75 Submitted.	
June 5	Filed Pltfs.' proposed findings of fact and conclusions of law.	
July 2	Filed defts., Ewald B. Nyquist & Bd. of Regents of the State of N.Y. proposed conslusions of law	
3	Filed defts. proposed findings of fact.	
7	Return date for filing conclusions of law by deft.--received	F-16
Aug. 7	Filed order setting 9-18-75 for oral argument at 10:00am-Curtin, DJ Notice & copies to Messrs. Schwartz, Koren, Griffin, Gregory & Coon	

Civ-1972-325

Docket Entries.

George Arthur, Norman Goldfarb et al. v. Ewald P. Nyquist et al.

C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order c Judgment No
1975		
Sept. 5	Meeting of Court and Counsel.	
18	Closing arguments of counsel. Adj. to 9-19-75 at 9:30am	
19	Closing arguments by counsel. Submitted.	
ct. 1	Filed letter to Judge Curtin dated 10-1-75 from Richard Griffin	
9	" Pltfs. rebuttal memorandum	
24	Filed Pltfs. trial brief, reply brief, rebuttal memorandum & findings	
1976		
Mar. 24	Meeting held. Adj. to 4-13-86 at 2:00pm for meeting.	
pr. 8	Filed letter to Judge Curtin dated 3-29-76 from Richard Griffin.	
8	Filed Pltfs. notice of motion & motion for leave to amend complaint ret. 4-13-76	
8	Filed Defts. Nyquist & Bd. of Regents affidavit in opposition to motion to amend complaint.	
14	Pretrial conference held before Judge Curtin.	
27	Filed letter to Judge Curtin dated 4-26-76 from Francis Offermann, Jr.	
27	" copy of letter to David J. Mahoney, Jr. dated 4-24-76 from Mary C. Zaehringer	
27	" copy of State Finances of League of Women Voters of N.Y.State	
27	" copy of Leagues of Women Voters in Erie County Development of Human Resources Sub-committee on Education Statement of National Position 1/69	
27	" copy of motion for leave to file brief as Amici Curiae	
30	Filed order granting pltfs' motion for leave to amend the summons and complaint and amending the title and Article IV of the complaint etc.-Curtin, DJ Notice & copies to Richard Griffin, Louis J. Lefkowitz and Leslie Foschio	F-17
30	Filed Decision & Order granting pltfs. motion to amend the complaint etc.-Curtin, DJ Notice & copies to Richard Griffin, Louis J. C Lefkowitz & Leslie Foschio	F-175
30	Filed Decision & Order that the Bd. of Education, Supt. of Schools, & the Bd. of Regents have violated the pltfs. 14th amendment right to equal protection under the Law by intentionally causing & maintaining the segregated school system etc. It is ordered that the City & State defts. prepare plans to desegregate the BPSS. The proposed plans must encompass the staff segregation as well as student segregation. All parties are directed to appear on 5-19-76 at 2:00pm. The attys. shall be accompanied by representatives of the agency defts. who are acquainted with the problems of preparing a plan, etc.-Curtin, DJ Notice & copies to Richard Griffin; Ruth Kessler Toch & Jean Coon for Louis J. Lefkowitz and Anthony Gregory & Frank Sedita for Leslie Foschio	F-175
ay 19	Filed letter to Judge Curtin dated 5-18-76 from Ewald B. Nyquist.	
19	" Deft., State Ed., reply.	
19	" Deft., City of Bfbreply	
19	Filed order that all letter & proposals sent to the Ct. by non-litigants will be in the custody of Robert White etc. The Commissioner of Ed. shall issue an OTSC to the Bflo Bd. of Ed. ret. the week of 5-31-76, etc. A further hearing is set for 6-21-76- etc.-Curtin, DJ Notice & copies to Richard Griffin, Leslie Foschio, Louis J. Lefkowitz, Robert Stone & David Blasband	F-176
26	Filed notice of appearance for defts., Martin Barell, Willard A. Genrich, Emlyn I. Griffith, Jos. Indelicato, William Jovanovich, Mary Alice Kendall, Genevieve S. Klein, Louis Yavner by Linden and Deutsch.	

Docket Entries.

DATE	PROCEEDINGS	Date Ord Judgment
1976		
May 27	Filed Pltfs. motion & supporting statement requesting that the Court immediatley enjoin the defts. from taking any steps at this time to implement the so-calls Buffalo Plan, especially as it purports to close East High School, etc.	
28	Filed order deferring pltfs. motion to appoint a monitor. Pltfs. motion to restrain implementation of the Buffalo Plan will be heard on 6-21-76. Meantime Pltfs. are directed to present their arguments & proposals to the Commissioner on 6-1-76 etc.-Curtin, DJ Notice & copies to Richard Griffin, Robert Stone, Louis J. Lefkowitz, Leslie G. Foschio & David Blasband,	F-1
June 1	" Notice of Appeal of Defts. Martin C. Barell, Willard A. Genrich, Emlyn I. Griffith, Joseph C. Indelicato, William Jovanovich, Mary Alice Kendall, Genevieve S. Klein and Louis E. Yavner (copy mailed to Messrs. Griffin, Lefkowitz at Bflo., Lefkowitz at Albany, Stone and Foschio and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Blasband)	
2	Filed Preliminary Remedy Proposal of The Buffalo Community Advisory Board for Bilingual Education.	
May 19	Meeting with counsel to submit defts. program of intergration. Plan is handed up to Court. Comm. Nyquist to have hearing week of 6-1-76. Ct. will then set hearing date week of 6-14-76	
June 3	Filed order making corrections in the Court's decision filed 4-30-76 etc.-Curtin, DJ Notice & copies to Richard Griffin, Leslie Foschio, Louis J. Lefkowitz & David Blasband, Robert Stone	F-1
10	Filed order clarifying the Cts. 4-30-76 amending order. The Individual members of both the Bd. of Regents & Bd. of Eduation were added to the lawsuit in their official capacities only-Curtin, DJ Notice & copies to Richard Griffin, Leslie Foschio, Louis J. Lefkowitz, Robert Stone & David Blasband	F-1
14	Filed Notice of Appeal of Defts. Ewald B. Nyquist, Board of Regents of the State of N.Y., Theodore M. Black, Carl H. Pforzheimer, Jr., Alexander J. Allan, Jr., Kenneth B. Clark, Harold E. Newcomb, Jorge L. Batista and Laura Bradley Chodos (copy mailed to Messrs. Griffin, Stone, Foschio & Blasband and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Lefkowitz, Albany)	
16	Filed Defts., Barell, Genrich, Griffith, Indelicato, Jovanovich, Kendall, Klein & Yavner notice of motion for reconsideration & modify its (the Cts.) 2 decisions dated 4-30-76 etc. ret. 6-14-76	
16	Filed Defts. Barell, Genrich, Griffith, Indelicato, Jovanovich, Kendall, Klein & Yavner brief in support of motion for reargument & modification.	
16	Filed letter to Judge Curtin dated 6-15-76 from Robert D. Stone	
16	Filed copy of the Appeal of Yerby Dixon, et al. from action of the Board of Education of the City School District of the City of Buffal in regard to racial imbalance and related subjects.	
17	Filed Deft. William A. Price motion for TRO & affidavit in support	
17	" attachments to deft. William Price motion for TRO A-G	
17	" attachment Northeast Alternative D	
17	" order denying TRO for William A. Price-Curtin, DJ Notice & copies to Richard Griffin, Robert D. Stone, Louis J. Lefkowitz David Blasband & Norman Rosenberg	F-1

Continued

Docket Entries.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	
George Arthur, et al.	Ewald B. Nyquist, etc., etal	DOCKET NO. 1972-325 Sheet 4 OF ____ PAGES

DATE 1976	NR.	PROCEEDINGS
June 18		Filed order that pltfs. & defts. show cause on 6-21-76 at 11:00 A.M. why an order should not issue granting intervenors', Community Advisory Board for Bilingual Ed. of Bflo, et al. to intervene in the action etc.-Curtin, DJ F-177
18		Filed Attys. for Intervenors memorandum of points & authorities in support of motion for intervention.
21		Filed letter to Judge Curtin dated 6-17-76 from David Blasband
21		" Deft., Wm. A. Price & Applicants for Intervention motion for a judgment declaring that he is a real party in the action & as such may fully participate etc. ret.
21		Filed Defts., Nyquist, Bd. of Regents, Black, Pforzheimer, Allan, Clark, Newcomb, Batista & Chodos affidavit in support of motion to reconsider.
22		Filed order granting motion of Community Advisory Board For Bilingual Education of Buffalo, Lourdes, Agosto, individually & on behalf of her minor childred etc. to intervene etc.-Curtin, DJ Notice to Richard Griffin, Peter Bienstock, Robert Stone, Louis Lefkowitz, Leslie Foschio, David Blasband, Norman Rosenberg F-177
23		Filed order that the motion of the Buffalo Teachers Federation, Inc. to intervene in this action as amicus curiae is granted etc-Curtin, DJ Notice & copies to Richard Griffin, Peter Bienstock, Robert Stone, Louis J. Lefkowitz, Leslie Foschio, David Blasband, Norman Rosenberg & Paul Klein F-17
24		Filed order that William A. Price has leave to intervene in this cause & made a party-Curtin, DJ Notice to Messrs., Griffin, Bienstock, Stone, Lefkowitz, Foschio, Blasband Rosenberg & Klein F-177
23		Filed letter to Judge Curtin dated 6-22-76 from Zachary Wellman
25		Filed Pltfs. Plans for the Desegregation/Integration of the Buffalo Public School System
21		Hearing on pltfs. motion to restrain implementation of Buffalo Plan. Motion by Bflo. Teachers Federation to intervene. Motion granted Motion by Community Advisory Bd. for Bilingual Education of Buffalo, etc. to intervene. Motion granted. Hearing is adj. to 6-22-76 at 9:30am
24		Hearing continued from yesterday. Deft., City of Bflo. Bd. of Ed. rests. Mr. Griffin makes opening statement for the pltfs. Adj. to 6-25-76 at 9:30am
22		Hearing continues from yesterday with same appearances. Adj. to 6-24-76 at 9:30am
25		Hearing continued from yesterday with same appearances.
29		Hearing continued. from yesterday with same appearances. Hearing Adj.
28		Hearing continued. adj. to tomarrow at 9:30am
July 9		Filed Pltfs. affidavit of personal service of OTSCfiled 6-18-76 on Richard F. Griffin, Norman Rosenberg, Anthony Gregory & Eugene Panfil on 6-18-76
9		Filed pltfs. affidavit of service by mail on OTSC on Robert D. Stone & David Blasband
9		Filed pltfs. affidavit of service (personal) of OTSC on Robert D. Sto David Blasband & Zachery Wellman
9		" pltfs. affidavit of personal service of order on Robert D.Stone David Blasband, Richard Griffin, Norman Rosenberg, Anthony Gregory & Eugene Panfil 6-25-76

continued

Docket Entries.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 1972-325
George Arthur, et al.	Ewald P. Nyquist, et al.	PAGE ____ OF _____ PAGES

DATE	NR.	PROCEEDINGS	
1976			
July 9		Decision on the hearing read by the court. Counsel to meet with the court on 8-17-76 at 2:00 P.M. to plan the next proceeding. By 10-15-76 the plan for the 1977-78 school year is to be submitted.	
21		Filed Order appointing Community Relations Service of the Dept. of Justice (CRS) to assist in the implementation of desegregation plan and to meet with representatives of defts. and pltfs. and to report to the court on 8-12-76--Curtin, DJ (notice & cy. to Messrs. Griffin, Bienstock, Stone, Lefkowitz, Foschio, Blasband, Rosenberg and Klein and to Community Relations Service, Dept. of Justice, Washington, D.C. 20543)	F-178
26		" Court Reporter's transcript of proceedings on 7-9-76	
26		" Letter dated 7-26-76 to Judge Curtin from Mr. Griffin	
27		" Letter dated 7-26-76 to Judge Curtin from Asst. Corp. Counsel Anthony Gregory	
27		" Pltfs'. Memorandum in opposition to motion of Regents Burell, Genrich, Griffith, Indelicato, Jovanovich, Kendall, Klein and Yavner for reargument and modification	
28		Meeting with counsel to clarify certain matters in Court's order of 7-9-76.	
June 30		Hearing continues from yesterday with same appearances. Trial is adj. until tomorrow	
July 1		Hearing continued. All counsel give closing arguments. Adj. to 7-9-76 for Courts decision.	
Aug. 6		Filed Notice of Appeal of Defts. Eugene T. Reville, Board of Education of the City of Buffalo, Florence E. Baugh, Samuel E. Sacco, Joseph E. Murphy, Mozella Richardson, Dr. Matt A. Gajewski, Louis C. Benton, Michael J. Ryan, Joseph D. Hillery, Marilyn P. Kavanagh, Stanley M. Makowski, Delmar L. Mitchell, Raymond Lewandowski, Gus Franczyk, Alfreda W. Slominski, William J. Dauria, Joseph S. Forma, Michael McCarthy, William B. Hoyt, George K. Arthur, Richard F. Okoniewski, Horace C. Johnson, John A. Ramunno, Anthony M. Masiello, Daniel J. Higgins and William A. Price (copy mailed to Messrs. Griffin, Bienstock, Lefkowitz at Buffalo, Lefkowitz at Albany (Attn: Jean Coon, Esq.), Stone, Blasband, Rosenberg and Klein, and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Foschio)	
12		Filed transcript of proceedings of 7-28-76	
16		" letter to Judge Curtin dated 8-13-76 from David Blasband	
16		" Defts., Barell, Genrich, Griffith, Indelicato, Jovanovich, Kendall, Klein & Yavner reply brief.	
16		" Hispanic Intervenors memorandum in support of motion for leave to take depositions.	
16		" order that deft., Supt. of Bflo Public School System show cause why an order should not issue granting intervenors leave to take depositions etc. ret. 8-17-76 at 2:00pm-Curtin, DJ	F-179
18		Filed affidavit of Willard A. Genrich in support of the motion for reconsideration & modification of the 2 orders dated 4-30-76	
17		Meeting between counsel and court.	

Continued

Docket Entries.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 1972-325
George Arthur, et al.	Ewald P. Nyquist, etc., et al.	Sheet ~~PAGE~~ 5 OF ___ PAGES

DATE	NR.	PROCEEDINGS
1976		
Aug. 24		Filed Notice of Appeal of Defts. Ewald P. Nyquist, etc., The Board of Regents of the State of New York, Thomas M. Black, Carl H. Pforzheimer, Jr., Alexander J. Allan, Jr., Joseph C. Indelicato, M.D., Kenneth B. Clark, Harold E. Newcomb, Willard A. Genrich, Emlyn I. Griffith, Genevieve S. Klein, William Jovanovich, Mary Alice Kendall, Jorge L. Batista, Louis E. Yavner, Martin C. Barrell and Laura Bradley Chodos, etc. (copy mailed to Messrs. Griffin, Bienstock, Stone, Foschio, Blasband, Rosenberg and Klein and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Lefkowitz, Bflo.)
25		" Notice of Appeal of Defts. Martin C. Barell, Willard A. Genrich, Emlyn I. Griffith, Joseph C. Indelicato, William Jovanovich, Mary Alice Kendall, Genevieve S. Klein and Louis E. Yavner (copy mailed to Messrs. Griffin, Bienstock, Lefkowitz at Bflo. (Attn. Eugene A. Panfil, Esq.), Lefkowitz at Albany (Attn. Jean M. Coon, Esq., Asst. Solicitor General), Stone, Foschio, Rosenberg and Klein and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Blasband)
25		" Pltf's. application for award of Atty's. fees and disbursements etc. ret. 9-13-76 at 10:00am
31		" Defts., Nyquist, Bd. of Regents, Black etc. notice of motion for an order reconsidering & modifying its 2 decisions dated 4-30-76 etc.
31		" letter to Judge Curtin dated 8-23-76 fromRichard Griffin re meeting with Bd. of Ed. on 8-19-76
Sept. 7		" letter to Judge Curtin dated 9-1-76 from Supt. of Schools re integration of the staff of schools
7		" copy of report of the Number of Schools falling in specific ranges of percent according to minority staff for75-76 and 76-77
13		" Pltfs. application for award of atty's. fees & disbursements ret. 9-20-76.
13		" letter to Judge Curtin dated 9-7-76 from Richard Griffin re Mrs. Coon's letter of 8-26-76.
13		" copy of letter to Michael Hernandez dated 9-1-76 from Peter Bienstock
14		" Pltf's. notice of motion to establish and appoint a monitoring commission ret. 9-27-76.
13		Pltfs. application for award of attys fees & disbursements. Adj. to 9-20-76 by consent.
17		Filed Notice of Appeal of Defts. Ewald B. Nyquist, The Board of Regents of the State of New York, Theodore M. Black, Carl H. Pforzheimer, Jr., Alexander J. Allan, Jr., Kenneth B. Clark, Harold E. Newcomb, Jorge L. Batista, and Laura Bradley Chodos from portions of orders entered 4-30-76 (copy mailed to Messrs. Griffin, Bienstock, Stone, Foschio, Blasband, Rosenberg and Klein and to Clerk, CCA with copy of docket entries; CCA's Form C mailed to Mr. Lefkowitz, Bflo., Attn. Mr. Panfil)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	
George Arthur, et al.	Ewald B. Nyquist, et al.	DOCKET NO. 1972-325 PAGE 5 OF ____ PAGES

DATE 1976	NR.	PROCEEDINGS
Sept. 20		Filed certified copy of Stipulation and Order of CCA that the notices of appeal filed 6-1-76 and 6-14-76 are withdrawn w/o costs and attys'. fees and w/o prejudice to the renewal thereof on or before 9-19-76; withdrawal and subsequent renewal is w/o prejudice to pltfs'. current application for atty's. fees and expenses
20		" certified copy of Stipulation and Order of CCA that the notice of appeal filed 8-6-76 is withdrawn w/o costs and attys'. fees and w/o prejudice to the renewal thereof on or before 9-19-76; withdrawal and subsequent renewal is w/o prejudice to pltfs'. current application for atty's. fees and expenses--Returned to CCA - see entry of 11-29-7
20		" letter to Judge Curtin dated 9-15-76 from Federation of South Buffalo Community Organizations re extension of time in connection with your order.
20		" affidavit in response to motions for counsel fee by David Blasband for Deft. Regents Barell, Indelicato, Genrich, Griffith, Klein, Jovanovich, Kendall & Yavner
20		" Notice of Appeal of Defts. Martin C. Barell, Willard A. Genrich, Emlyn I. Griffith, Joseph C. Indelicato, William Jovanovich, Mary Alice Kendall, Genevieve S. Klein and Louis E. Yavner from certain parts of orders entered 4-30-76 (copy mailed to Messrs. Griffin, Bienstock, Stone, Lefkowitz at Bflo. Attn: Mr. Panfil, Foschio, Rosenberg and Klein and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Blasband)
20		" Notice of Appeal of Defts. Eugene T. Reville, etc., The Board of Education of the City of Buffalo, Florence E. Baugh, Samuel E. Sacco, Joseph E. Murphy, Mozella Richardson, Dr. Matt A. Gajewski, Louis C. Benton, Michael J. Ryan, Joseph D. Hillery, Marilyn P. Kavanagh, Stanley M. Makowski, etc., Delmar L. Mitchell, Raymond Lewandowski, Gus Franczyk, Alfreda W. Slominski, William J. Dauria, Joseph S. Forma, Michael McCarthy, William B. Hoyt, George K. Arthur, Richard F. Okoniewski, Horace C. Johnson, John A. Ramunno, Anthony M. Masiello, Daniel J. Higgins and William A. Price from orders of 4-30-76 and 7-9-76 (copy mailed to Messrs. Griffin, Bienstock, Stone, Lefkowitz at Bflo. Attn: Mr. Panfil, Blasband, Rosenberg and Klein and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Foschio)
20		Pltfs. application for award of attys. fees and disbursements. Adj. to 11-22-76 fro City & State defts. to make written responses
27		Filed Deft., Bd. of Regents , affidavit for defts. in opposition to monitors.
27		" affidavit of Eugene T. Reville requesting that a monitor not be appointed.
27		Pltfs. motion to establish & appoint a monitoring committee. Decision reserved.

VIL DOCKET CONTINUATION SHEET

LAINTIFF	DEFENDANT	DOCKET NO. 1972-325
George Arthur, et al.	Ewald B. Nyquist, et al.	Sheet xxx 6 OF ____ PAGES

DATE 1976	NR	PROCEEDINGS
Sept.30		Meeting scheduled but not held. Adj. to 10-1-76
Oct. 1		Meeting with Court. Buffalo Bd. of Ed. will file report with Ct. 10-7-76 telling what steps have been taken to comply with July 9, 1976 order of the Ct. Report tobe filed by 2:00pm
7		Filed City Defts. request for additional time to file further desegration plan
14		Filed Pltf's. opposition to extension of time.
14		" copy of Summary of State Education Department Activities in the Buffalo Integration Effort Part I Overview
18		" letter to Judge Curtin dated 10-12-76 from Peter Bienstock re not receiving all papers.
20		" order directing the Bd. to file with the Ct. the school census data etc. They shall complete individualy school community meetings in each elementary school by the end of Nov. 1975. Both Bd. of Ed.& State Defts. shall file bi-weekly reports with the Ct. for inspection etc- Curtin, DJ Notice & copies to Messrs. Griffin, Foschio, Stone, Panfil, Blasvend, Bienstock, Rosenberg & Klein F-181
14		Application by Bflo. Bd. of Ed. for an extension of time to file a final plan.
Nov. 4		Filed Deft., Price, notice of motion for an order directing the Bd. of Ed. of Bflo etc. to compile & produce an accurate census of the racial composition of student enrollment erc. ret. 11-15-76
11		" Court Reporter's transcript of proceedings on 8-17-76
15		Deft., Price, motion for order directing Bd. of Ed. to compile & produce an accurate census of racial composition, etc. Adj. to 11-29-76.
19		Pertinent original papers, exhibits, docket entries and Clerk's certificate mailed to Clerk, CCA
22		Filed affidavit of Jean M. Coon for defts., Nyquist, Bd. of Regents, Black, Pforzheimer, Allan, Clark, Newcomb, Batista & Chodos in opposition to applications for Atty's. fees & disbursements.
22		Filed affidavit in opposition to the awarding of atty. fees by Anthony Gregory, Attorney for City Defts.
22		City & State Defts. to make written responses. Ct. received State response but not city response.
29		Filed affidavit of Herman Schwartz in response to affidavit in opposition to applications for Atty's fees & disbursements of Jean Coon
29		Filed certified copy of Order of CCA granting motion of pltfs.-appellees to expunge the signature of Pltfs'. attorney upon stipulation concerning the withdrawal of a notice of appeal relative to city defts. dated 8-5-76 and filed 8-6-76
29		Mailed letter to CCA stating that the certified copy of their Stipulation and Order filed 9-20-76 re withdrawal of notice of appeal filed 8-6-76 and which they want returned per their letter of 11-19-76 is Item 59 of the Record on Appeal mailed to CCA on 11-19-76.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. ______ PAGE ____ OF _____ PAGES

DATE	NR.	PROCEEDINGS
1976 Dec. 3		Filed letter to Judge Curtin dated 12-1-76 from Pltf's. Atty.
3		" affidavit of Daniel R. Acker re attys' fees.
3		" affidavit of Richard F. Griffin in reply to affidavits of Jean Coon & Anthony Gregory
3		" affidavit of Norman Goldfarb on behalf of pltfs. re attys fees
Nov. 29		Meeting with Ct. Application by pltfs. for attys. fees. Legal comments by defts. may be filed by 12-20-76
Dec. 10		**Filed Decision & Order stating the reasons for denialof the defts', 8 Individual Regents, motion to dismiss the action as to them etc.-Curtin, DJ Notice & copies to Messrs. Griffin, Lefkowitz, Blasbend, Foschio, Stone, Panfil, Bienstock, Davidson & Klein.** F-183
13		**Decision & Order filed 12-10-76, supplemental docket entries and supplemental Clerk's certificate mailed to Clerk, CCA**
14		**Filed order directing all parties to analyze & brief the Austin case and Washington v. Davis, supra, as they pertain to this case etc. The Ct. directs that brief be submitted on or before 1-19-77-Curtin, DJ Notice & copies to Messrs. Griffin, Foschio, Stone,Lefkowitz, Blasbend, Bienstock, Rosenberg & Klein** F-183
20		Filed copy of the plan for the desegregation of the Buffalo Public Schools etc.
30		" Defts., Reville, Makowski & Members of the Bd. of Ed. etc. notice of motion to vacate or in the alternative to reconsider this Ct's. "Decision & Order"of 4-30-76 ret. 1-5-77
1977 Jan. 3		**Filed pltf's. motion to require inclusion of material in record on appeal ret. 1-10-77**
5		**Filed Desegregation Plan in response to an order of the U.S.D.C. Western Dist. of N.Y. Buffalo Public Schools**
6		**Filed Decision & Order that pltfs. are entitled to reasonable attys. fees for their efforts. Attys. for the State & City defts. are to meet with pltf's. atty. & try to agree at a reasonable amt. etc. If they cannot they shall meet with the Ct. on 2-15-77 to set a hearing date-Curtin, DJ Notice & copies to Herman Schwartz, Richard Griffin, Louis J. Lefkowitz, Leslie Foschio & David Blasbend** F-184
5		**Bflo. Bd. of Ed.plan submitted to the Ct. Any brief or comments against the plan are to be filed by 1-19-77. Oral argument on 1-21-77 at 10:00am**
7		**Filed City Defts. notice of motion for an order vacating the Ct's. injunction enjoining the sale of all schools closed by the Bflo.Bd. of Ed. in phase I of the plan & permitting the sale of School #83 to Kadimah School of Bflo. ret. 1-14-77**
11		Filed transcript of proceedings of 6-28-76.
13		" letter to JudgeCurtin dated 1-11-77 from Peter Bienstock re not receiving a copy of the desegregation plan etc.
17		Transcript filed 1-11-77, supplemental docket entries and supplemental Clerk's certificate mailed to Clerk, CCA

CONTINUED.

VIL DOCKET CONTINUATION SHEET

LAINTIFF	DEFENDANT	DOCKET NO. 1972-325
George Arthur, et al.	Ewald B. Nyquist, et al.	Sheet 7 OF PAGES

DATE 1977	NR.	PROCEEDINGS
Jan.10		Pltfs. motion for order requiring defts. to include within record of appeal the transcripts & exhibits of all remedy hearings, etc. adj. to 1-17-77
14		Bd. of Ed. motion to sell school #83. Motion granted.
19		Last day for filing briefs.
20		Filed memorandum of law for defts. Nyquist, Bd. of Regents and Regents Black, Pforzheimer, Allan, Clark, Newcomb, Batista and Chodos
24		Filed order that the injunction in the Ct's. order of 7-9-76 is vacated only to the extent that it applies to School #83 & the sale thereof is approved-Curtin, DJ Notice to Messrs. Griffin, Foschio, Stone, Lefkowitz, Blasbend, Bienstock, Rosenberg & Klein F-184
26		Filed memorandum of regents Barell, et al. concerning the impact of recent Supreme Ct. decisions on the substantive decision in the instant proceedings.
26		Filed memorandum on behalf of pltfs.
26		" memorandum of law for Ctiy of Buffalo Defts.
27		" Pltf;s. comments uponCity Defts'. desegrefation plan dated 1-5-77 and State defts' plan of 12-17-76.
27		" letter to Judge Curtin dated 1-27-77 from Richard F. Griffin re scheduling of appearance.
eb. 4		" **Notice of Appeal of Defts. Ewald P. Nyquist, The Board of Regents of the State of New York, Thomas M. Black, Carl H. Pforzheimer, Jr., Alexander J. Allan, Jr., Joseph C. Indelicato, M.D., Kenneth B. Clark, Harold E. Newcomb, Willard A. Genrich, Emlyn I. Griffith, Genevieve S. Klein, William Jovanovich, Mary Alice Kendall, Jorge L. Batista, Louis E. Yavner, Martin C. Barrell and Laura Bradley Chodos from Order filed 1-6-77 re payment of fees to pltfs'. attys. (copy mailed to Messrs. Griffin, Bienstock, Stone, Foschio, Blasband, Rosenberg and Klein and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Lefkowitz, Bflo., Attn. Mr. Panfil)**
15		Filed supplemental brief submitted by the City defts.
Mar. 1		**Filed Decision & Order reaffirming the Ct's. 4-30-76 decision A hearing is set for 3-14-77 at 11:00am for the proposed plan for the Sept., 1977 school term etc.-Curtin, DJ Notice & copies to Messrs. Griffen, Schwartz, Coon, Panfil, Blasband, Gregory, McCutcheon.** F-186
eb. 9		**Motion to reconsider prior decision & order of the Ct. Submitted.**
Mar. 3		Filed order setting 4-4-77 at 11:00am for a hearing on the matter of attys. fees-Curtin, DJ Notice & copies to Messrs. Griffin, Schwartz, Gregory. McCutcheon, Coon. Panfil, Blasband, Carlisle, Davidson & Klein F-186
9		" Notice of Appeal of Defts. Joseph Manch, etc., Eugene T. Reville, etc., The Board of Education of the City of Buffalo, Florence E. Baugh, Samuel E. Sacco, Joseph E. Murphy, Mozella Richardson, Dr. Matt A. Gajewski, Louis C. Benton, Michael J. Ryan, Joseph D. Hillery, Marilyn P. Kavanagh, Stanley M. Makowski, etc., Delmar L. Mitchell, (continued)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 1972-325 PAGE ____ OF ____ PAGES
George Arthur, et al.	Ewald P. Myquist, et al.	

DATE 1977	NR.	PROCEEDINGS
		Raymond Lewandowski, Gus Franczyk, Alfreda W. Slominski, William J. Dauria, Joseph S. Forma, Michael McCarthy, William B. Hoyt, George K. Arthur, Richard F. Okoniewski, Horace C. Johnson, John A. Ramunno, Anthony M. Masiello, Daniel J. Higgins and William A. Price from Order filed on 3-1-77 (copy mailed to Messrs. Griffin, Bienstock, Lefkowitz at Bflo. Attn: Mr. Panfil, Lefkowitz at Albany Attn: Jean Coon, Esq., Blasband, Stone, Davidson and and Klein and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Foschio)

Complaint served -
July 10, 1972

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NEW YORK

GEORGE ARTHUR, NORMAN GOLDFARB,
WILLIAM AND WILHELMINA P. SEALES,
JOHN MEDIGE, and THE CITIZENS
COUNCIL FOR HUMAN RELATIONS, INC.
and NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
BUFFALO BRANCH,

Plaintiffs,

v.

COMPLAINT
1972-325

EWALD P. NYQUIST, COMMISSIONER OF
EDUCATION, THE BOARD OF REGENTS OF
THE STATE OF NEW YORK, JOSEPH MANCH,
SUPERINTENDENT OF SCHOOLS OF THE
CITY OF BUFFALO, THE BOARD OF
EDUCATION OF THE CITY OF BUFFALO,

Defendants.

I

NATURE OF ACTION AND JURISDICTION

See #4

This is a civil action for declaratory judgment and injunctive relief under Title 42, United States Code, §1983, et seq. Plaintiffs claim that defendants, while acting under color of state law, have deprived the plaintiffs and their class of rights guaranteed by the Fourteenth Amendment of the United States Constitution by creating, maintaining, permitting, condoning and perpetuating racially segregated public schools in the City of Buffalo and in the Buffalo Metropolitan area. Jurisdiction is based on 28 U.S.C. §§1343 and 2201.

II

CLASS ACTION

See #5

Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated, who are parents of children presently required to attend public school systems in the Buffalo metropolitan area. This class is so numerous that joinder of all members is impractical. There are questions of law and fact common to each member of the class and the claims of the representative plaintiffs are typical of the claims of each member of the class. The representative plaintiffs will fairly and adequately protect the interests of the class. The parties defendant have acted or refused to act on grounds generally applicable to the plaintiffs' class and therefore injunctive and declaratory relief is appropriate with respect to the class as a whole.

III

PLAINTIFFS

DK

A. The individual plaintiffs are citizens of the United States, the State of New York and the County of Erie, and are parents of children attending public schools in Buffalo and Buffalo suburbs. Plaintiffs George Arthur, William Seales and Wilhelmina Seales are black; plaintiffs Norman Goldfarb and John Medige are white.

DK B. The Citizens Council for Human Relations, Inc., is a non-profit corporation organized under the laws of the State of New York and dedicated to the goal of a just society with equal opportunity in education, housing and employment for all. Its members include many black and white residents of Erie County with children in the public schools thereof.

DK C. The National Association for the Advancement of Colored People, Buffalo Branch, is a branch of the National Association for the Advancement of Colored People. It is dedicated to the goal of a just society with equal opportunity in education, housing and employment for all. Its members include many black and white residents of Erie County with children in the public schools thereof.

IV

DEFENDANTS

a A. Defendant BOARD OF EDUCATION OF THE CITY OF BUFFALO, NEW YORK (hereinafter referred to as "the BOARD") establishes policies, practices, customs and usages which are applicable to the governance of the public school system of the City of Buffalo, New York.

a B. Defendant JOSEPH MANCH has been appointed by the BOARD as Superintendent of the school system of the City of Buffalo, New York, and as such he is the chief executive officer of the system.

DK C. Defendant REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK (hereinafter referred to as "the REGENTS") establish the policies, practices, customs and usages which are generally applicable to public school systems in the State of New York. The REGENTS are charged by law with plenary power over the operation of the schools of the State of New York, including the selection of sites for school construction. The REGENTS are charged with an affirmative constitutional duty to exercise their powers so as to afford equal educational opportunities to all citizens, including the plaintiffs and the represented class.

DK D. Defendant EWALD B. NYQUIST is the chief executive officer of the State Education Department, appointed and serving at the pleasure of the REGENTS, and as such has general supervisory powers to implement the policies of the REGENTS and other laws of the State of New York applicable thereto.

V

RACIAL SEGREGATION IN THE BUFFALO PUBLIC SCHOOLS

See #7 A. At present and for many years in the past the Buffalo public school system has been characterized by a high and increasing degree of racial separation. In January 1964 a report for the United States Commission on Civil Rights concluded that Buffalo had perhaps the worst problem of segregation in New York State because it had more children in segregated schools than anywhere else in the State. *Civil Rights USA - Public Schools - Cities in the North and West - Buffalo*, p. 1 (1964). Since then the segregation has increased. Ethnic censuses of the racial and ethnic composition of the Buffalo public schools in recent years show that the proportion of black and Spanish surnamed children in the Buffalo public schools has been rising:

	BLACK	SPANISH SURNAMED	OTHER
1964-65	24,573	943	47,377
1971-72	27,136	1,614	39,487

These minority children have been concentrated in racially segregated schools. In 1965 twenty-one elementary schools were racially identifiable as black schools with fourteen of these schools having 96-100% black pupils; in October 1971 twenty-six schools were racially identifiable as black schools with seventeen schools having 96-100% black pupils. In addition, Clinton Junior High School had a black student population of 96.8% in 1966 and 99.1% in 1971; Fillmore Middle School had a black student population of 42.4% in 1966 and 74.0% in 1971; Genesee Humboldt Junior High School had a black student population of 31.5% in 1966 and 76.4% in 1971. Summarizing this development, defendant NYQUIST declared in a letter to a member of defendant BOARD dated January 24, 1972 that "segregation is more severe in Buffalo now than it was seven years ago, [when defendant NYQUIST's predecessor ordered integration of the Buffalo schools], with over 20 schools 90% or more black and 29 schools 90% or more white."

a B. The teaching staff in schools of the City of Buffalo contains a very small percentage of minority teachers. In 1971 it was less than 10%. Minority representation at the supervisory level is even worse. Such minority personnel are systematically assigned largely to the predominantly black schools and contribute to the illegal and unconstitutional racial identifiability of such schools.

Deny

✓

VI

DK

Such racial isolation and segregation is educationally detrimental to students in the Buffalo public schools, and denies them equal educational opportunity. Thus, in its 1969 Restatement of Policy in Racial and Social Class Isolation in the Schools, defendant REGENTS found that the elimination of racial segregation in the schools is necessary, as did the 1972 Report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education (The Fleischmann Commission). These reports confirmed what defendant NYQUIST's predecessor, JAMES E. ALLEN, found in 1965 when he ordered defendant BOARD to submit a plan for the progressive elimination of racial separation by May 1965. In the Matter of Yerby Dixon, N.Y.St.Ed. No. 7470 (February 15, 1965). It was also reflected in defendant REGENTS' policy first set down in 1960, and most recently reaffirmed on March 24, 1972.

VII

Deny Such racial segregation is the direct result of policies, practices, customs, and acts of omission and commission by the defendants and by other governmental agencies and units of the City of Buffalo, State of New York and the United States, as more fully set forth hereinafter. Such governmental agencies and units have thereby denied plaintiffs and other members of their class equal educational opportunity and have created, maintained, permitted, condoned and perpetuated a dual and racially segregated system of public schools.

Deny A. DEFENDANT BOARD OF EDUCATION. The BOARD has permitted and intensified the sharp separation of the Buffalo school population into racially identifiable schools. Instead of trying to substantially reduce the racial isolation, it has adopted measures with the purpose and/or effect of increasing and aggravating school segregation by race, as follows:

admit the facts contained therein but deny the conclusion drawn that the Board intentionally drew its [illegible] zones to [illegible] to promote segregation.

1. (a) In 1958 the BOARD planned a new junior high school, to be known as Woodlawn Junior High School and located it in a black residential area, knowing that the BOARD would have to exercise particular care in drawing the attendance zone lines to avoid its becoming an all-black school. The junior high school was constructed in 1964 and could have been zoned to make it an integrated school. Instead the BOARD chose to adopt a plan that zoned it on a basis which the BOARD knew would make the school almost 100% black; the plan chosen was one of several that were proposed and was the plan ensuring the maximum segregation.

admit (b) The BOARD is currently planning to construct a new school No. 59 in an all-black area.

admit 2. The Board has created and maintained numerous optional areas which have allowed white children who reside in the attendance zone normally served by a school to transfer to other schools. Thus the majority of the student body at such schools have become overwhelmingly black and racially identifiable as such. Examples of such schools are Woodlawn Junior High School and Elementary Schools 16 and 17. Thus:

admit (a) In 1964 the boundaries of Woodlawn Junior High School were established to include a substantial white residential area around Schools 16 and 17. However, because residents of this area had previously been given options of various kinds to attend largely white schools, Woodlawn Junior High School began and has remained virtually 100% black.

admit (b) The aforementioned optional areas at Elementary Schools 16 and 17 have allowed white residents of such zones to avoid attending such schools, and as a result such elementary schools have remained racially identifiable as black schools.

admit 3. In addition to the optional areas, and despite an alleged adherence to the "neighborhood school concept", the BOARD allows white children to go to racially identifiable white schools even though such schools are not in their neighborhoods. For example:

admit (a) White children residing in the School 16 district have attended other schools not only by exercising the formal option applicable to certain areas, but also by being permitted to transfer on an individual basis for such reasons as "social adjustment" or "psychological problems". School 16 is thus 85% black although located in a white residential reas.

admit (b) (1) The Board of Education has permitted white students in the East High School district to attend South Park High School by offering a Polish language course at South Park High School, a considerable distance from their homes. No Polish language courses were given at East High School, which has remained 100% black. There is no valid reason why the Polish language cannot be offered in East High School, thereby enabling the white students to attend their "neighborhood school".

How many transferred?
When was boundary established?

Deny

(2) This transfer policy was reaffirmed on June 14, 1972, when the BOARD voted to set aside a change in this policy that was sought and preliminarily instituted by the school administration to meet anticipated criticisms by the United States Department of Health, Education and Welfare. The BOARD's action of June 14, 1972 was based on an explicitly stated intent to permit white students to avoid having to attend East High School.

Deny

4. Despite knowledge of the serious racial separation and isolation in the Buffalo schools, defendant BOARD has explicitly refused and failed to take action to remedy this situation. As the Fleischmann Commission concluded, "nothing concrete has been done to overcome" Buffalo's racial isolation, "and given current community attitude and lack of leadership, there is very little reason to expect that anything will be done voluntarily." (p. 4.44)

admit

(a) (1) For example, in its January 1968 report to the State Commissioner on Education entitled "Recommendation for Achieving Quality Integrated Education in the Buffalo Public School," the BOARD promised that: it would convert Southside Junior High School into a Middle School; the BOARD's staff would "be directed to develop a plan for the use of this building (Woodlawn Junior High School) without maintaining its presently segregated character; and the BOARD would provide "a plan either to integrate East [High School] or to distribute its pupils among the other secondary schools will be developed when space makes this possible."

admit the facts but deny that
that any conclusions can be drawn that
said inaction was racially motivated

(2) None of this has been done: Southside Junior High School has not been converted into a middle school which would have increased the percentage of black students to 30%; instead the BOARD has acted to reduce the number of black pupils attending Southside Junior High School from approximately 20.7% in 1969-70 to 16.7% in 1971-72. Nothing has been done to integrate Woodlawn Junior High School. The BOARD has not acted to create or implement a plan either to integrate East High School or to distribute its pupils among the other secondary schools.

admit

(b) In 1967, defendant MANCH appointed an Advisory Council on Integration, which was asked to propose ways to integrate the Buffalo public schools.

The Advisory Council made twenty-eight recommendations, but only one of these was adopted. (+) By the Board (*)

admit

Dny

5. (a) Defendant BOARD has been ordered to integrate the Buffalo public schools by defendant NYQUIST and his predecessor many times since February 15, 1965, when an order was entered in The Matter of Yerby Dixon, supra. There the Commissioner found that the Buffalo school system was racially segregated. The BOARD has nevertheless refused to adopt any adequate plan though many have been suggested. As a token, the BOARD has approved a limited desegregation plan that it adopted in 1966, despite the fact that the plan cannot be implemented because the Buffalo Common Council has refused to fund the building of middle schools that are necessary in order to carry out the BOARD's desegregation plan. That minimal plan itself limits desegregation to grade levels 5 and above, even though educational experts believe desegregation must begin in the early grades. Moreover, such plan, as implemented, limits transportation of students to blacks, and almost exclusively to those in grade 6 and above.

admit

(b) The most recent order from the Commissioner's office was on January 24, 1972. At a regular meeting on March 22, 1972, the BOARD voted to refuse compliance with this order and informed defendant NYQUIST that it could not produce a plan for the desegregation of the Buffalo public schools by April 1, 1972, as he requested. On the same day the BOARD refused even to consider a report made to the BOARD by the Advisory Planning Council on Desegregation containing a plan to desegregate the Buffalo public school system, but voted merely to receive and file such report. In addition, and at the same meeting, the BOARD approved a resolution that the BOARD, as presently constituted, is opposed to any form of forced compulsory transport for purposes of integration.

admit 6. Defendants have never made an attendance area change that involved assigning students from a majority white residential area to a majority black school, even though some white schools have a student population in excess of capacity while some black schools have a population of less than capacity.

Deny B. THE COMMON COUNCIL OF THE CITY OF BUFFALO is the legislative organ of the City, and determines the budget of the Buffalo public schools. It has consistently performed acts of omission and commission and adopted policies and practices with the purpose and/or effect of creating, maintaining, condoning, permitting and perpetuating a racially segregated school system in Buffalo.

admit [illegible] [illegible] 1. In July, 1968, the Common Council approved a patently unconstitutional amendment to a city ordinance which had the purpose and effect of preventing the use of portable classrooms in the City of Buffalo. The use of such classrooms was stated by defendants MANCH and BOARD to be essential to the reduction of racial segregation by providing classroom space for black pupils at predominantly white schools. The amendment was passed for the express purpose of preventing such use, and was held unconstitutional in August, 1968 under state law.

not ruled
[illegible] – it invalid – com. Council
no power – ordinance
[illegible] in decision

admit + deny 2. The plan adopted in 1966 by defendant BOARD for reducing racial isolation in the Buffalo schools is and was dependent on the planning and development of integrated middle schools and comprehensive high schools. The COMMON COUNCIL has steadily refused to provide funding for such planning and development, with the purpose and/or effect of preventing or impeding the reduction of racial isolation.

Deny 3. The COMMON COUNCIL has refused to (fulfill a commitment) made in the Model Cities application by the City of Buffalo to create a fair housing law covering owner-occupied, two-family housing, such housing not being covered by the State law. This type of housing comprises the bulk of available rental housing in the City of Buffalo. The COUNCIL's refusal to honor its commitment has resulted in continued racial containment of blacks to prescribed residential areas, as more fully set forth below, and in the containment of black children in the racially identifiable black schools in said residential areas.

Deny the conclusion

4. In 1972, the COMMON COUNCIL voted to express its opposition to the transportation of pupils to achieve integration.

admit the appointment
deny all else

C. 1. FRANK A. SEDITA is the mayor and chief executive officer of the City of Buffalo and appoints the members of defendant BOARD OF EDUCATION. In February, 1972, Mayor SEDITA proposed the appointment of Mrs. Carol E. Williams to fill an existing vacancy on defendant BOARD. In proposing Mrs. Williams' appointment, the Mayor stated that the appointment affirmed his position against cross-bussing. The appointment of Mrs. Williams to the seven-member BOARD broke a deadlock on the issue of cross-bussing and on the nature of defendant BOARD's response to the Commissioner's order for a desegregation plan. The proposal of Mrs. Williams' name came on the day after the Advisory Planning Council on Desegregation published its report, in which it suggested the use of cross-bussing as a means of eliminating racial imbalance in the Buffalo Public Schools. Mrs. Williams has since been appointed to the BOARD and has opposed any type of bus transportation for the purposes of integration; she voted for the BOARD's actions at the March 22, 1972 BOARD meeting noted above at ¶VII A.5.(6).

DK 2. Mayor SEDITA deleted from the 1972-73 Capital Budget funds requested by the BUFFALO BOARD for construction of two middle schools which, as noted above in ¶VII B.3, are essential to the limited desegregation plan adopted by the BOARD.

DK D. 1. THE MUNICIPAL HOUSING AUTHORITY OF THE CITY OF BUFFALO ("MHA") has condoned and encouraged segregation in housing, and has thereby produced and/or contributed to school segregation. In 1959, the State Commission on Discrimination (now known as the State Commission on Human Rights), found that until 1950, when a state law forced its abandonment, racial segregation was the policy of the MHA. In pursuance of such policy, said MHA explicitly identified and segregated housing projects by race, by selecting sites and assigning tenants by race. The effects of such policy still continue.

Durry 2. Defendant BOARD and the COMMON COUNCIL, MHA, and Mayor SEDITA were and are aware of the extent of residential racial segregation in the City of Buffalo. They have nevertheless adopted policies and practices in matters affecting the Buffalo public schools which permitted the schools to reflect and incorporate such residential racial segregation, thereby and inevitably making the schools racially segregated.

DK E. AGENCIES OF THE STATE OF NEW YORK have performed acts of omission and commission with the purpose and/or effect of creating, maintaining, condoning, permitting and perpetuating a racially segregated school system in the City of Buffalo.

DK 1. In 1969, the New York State Legislature enacted Chapter 342 of the Laws of New York, amending §3201 of the State Education Law. Chapter 342 prohibited state education officials and appointed boards from assigning students, or establishing, reorganizing or maintaining school districts, school zones or attendance units, for the purpose of achieving racial equality in the schools. This act was deliberately designed to prevent desegregation of the New York State public schools, and was held unconstitutional by a three-judge court in Lee v. Nyquist, 318 F.Supp. 710 (1970), aff'd, 402 U.S. 935 (1971), on the ground that it involved the State in racial discrimination and impermissible racial classifications.

Not so

admit the facts, DK as to rest 2. Defendants REGENTS and NYQUIST and other agencies have approved the construction of schools, such as Woodlawn Junior High School, which they well knew would perpetuate and promote racial segregation.

Deny 3. Said defendants and state agencies have failed to exercise their powers to require the

City of Buffalo and defendant BOARD to reduce the racial segregation in the Buffalo school system, even though state officials were aware of the extent of such segregation and allegedly deplored it, knew such segregation was becoming more severe, and knew that local officials had done and would do nothing to reduce such segregation.

DK F. THE FEDERAL GOVERNMENT, through its agent, the Federal Housing Authority, ("FHA"), has performed acts of omission and commission with the purpose and effect of creating, maintaining, condoning, permitting and perpetuating racial segregation in the Buffalo schools. Since 1930, the FHA has fostered and encouraged the development of residential segregation by race by, inter alia, cooperating with realtors, lending agencies and others, in restricting and containing black persons within certain residential areas; by refusing financing to housing that was not in racially and socially homogeneous and "harmonious" areas; and by encouraging restrictive covenants. Although such practices occurred some years past, these effects continue, and the FHA has not taken significant steps to undo the impact of such policies and practices.

VIII

DK No valid educational or other goals are served by the policies, practices, and acts of commission and omission as described above, that could not equally be served by other school attendance area configurations, or alternative forms of organization, which do not produce the racial segregation and denial of equal educational opportunity existing in the Buffalo public schools.

IX

RACIAL SEGREGATION IN THE PUBLIC SCHOOLS OF THE BUFFALO METROPOLITAN AREA

admit

The City of Buffalo and the cities, towns and villages surrounding it in Erie County (hereinafter called "suburbs") are bound together by a community of interest which makes it appropriate to consider them as constituents of one community (hereinafter called "the Area"). Residents of the suburbs work in Buffalo and vice-versa; the Department of Labor considers the Area as a single labor market, and the United States Department of Housing and Urban Development considers the Area to be a single housing market. Many governmental functions are performed on a county level, including but not limited to welfare, mental health, the library, parks and water and sewer facilities. Political representation on national, state and local levels cuts across Buffalo and the suburbs. Social, cultural, athletic, educational and recreational activities are similarly county and Area-wide. The Niagara Frontier, and especially its Erie County component, is thus a closely integrated economic, social and governmental entity.

X

admit

This community of interest among the cities and towns of the Area extends to educational matters as well. Numerous cooperative arrangements exist among the various school authorities in the Area on a wide range of matters, including many and sometimes all the school districts in the Area. These have included, among others, attendance in the Buffalo vocational schools by children from the suburbs; attendance at a school for deaf and otherwise handicapped children at the E. J. Meyer Memorial Hospital and Children's Hospital in Buffalo; and attendance in certain Amherst schools by children residing in Buffalo whose parents are able to pay tuition for them. In 1971-72, about 15,000 pupils in Erie County attended elementary and secondary schools outside their own school districts, most of whom were transported by bus at public expense. In addition, grants for federal aid to schools have been jointly presented by both Buffalo and the suburban districts. Further, numerous private schools in the Area have pupils drawn from throughout the Area.

XI

admit

A. Despite this economic, social and educational community of interest between Buffalo and the other public school districts in the Area, no cooperative or other arrangements have been made with respect to ending the severe racial isolation and segregation of children in the various public schools in the Area, even though cooperative arrangements for other purposes have been made. This racial isolation is reflected in the following minority population percentages for 1970-71 for a few of the suburban school systems and the City of Buffalo:

	Minority (Black and Spanish surnamed)	Whites	Other
City of Buffalo	40.7	58.4	0.8
Williamsville	0.4	99.2	0.4
Amherst Central High School	0.5	99.2	0.3
Sweet Home	1.0	98.7	0.3
Hamburg	0.1	99.8	0.1
Kenmore	0.3	99.5	0.2
West Seneca	0.3	99.7	-

DK B. Racial isolation and separation in the Area has existed for many years. It has recently been increasing and can be expected to increase in the future as the black population in Buffalo continues to rise, the Buffalo white population declines and the white suburban population increases because of state-imposed residential immobility of the black population.

DK C. Defendant REGENTS have found and concluded that racial isolation denies the children affected thereby their right to equal educational opportunity. This finding has been concurred in by other educational experts. The State of New York has thus recognized, through its duly authorized agents and experts, that children attending its public schools in a racially isolated setting are being denied equal educational opportunity.

XII

Deny A. The increasing racial isolation of the black and white children in the public schools of the Area, with its consequent denial of equal educational opportunity, has been created, maintained, permitted, condoned and perpetuated by the defendants and by other governmental agencies and units of the State and federal government, who have engaged in various and numerous acts of omission and commission, including inter alia, housing agencies whose policies and practices have served to contain the black population of the Area within the City of Buffalo. As a result of these and other acts, the district boundaries have served to prevent integration, and to maintain and perpetuate a dual system producing racial isolation and the denial of equaleducational opportunity.

Deny B. Defendants and other governmental agencies and units have committed, inter alia, the following acts of omission and commission that have had the purpose and effect of creating, maintaining, permitting, condoning, and perpetuating racial isolation and segregated school systems in the Area.

DK 1. THE SUBURBAN SCHOOL DISTRICTS have acted to exclude black children and to maintain an all-white school system as follows:

DK (a) In 1970 the Village of Williamsville enlarged its school board and elected board members pledged to exclude black children from Buffalo from the Williamsville schools. Such action constituted a rejection of a plan to admit 100 black children from Buffalo on a voluntary transfer basis. In April, 1972, the Williamsville School Board reaffirmed its refusal to admit any such black students.

DK (b) In 1971 the Sweet Home School District elected members of the school board pledged to vote against the admission of any black children from Buffalo.

DK (c) These actions have been taken by such school boards and others in the Area despite (1) recommendations by the Superintendents of the Area that such boards enter into cooperative arrangements with the Buffalo schools in order to achieve equal educational opportunity and reduce racial isolation in the schools in the Area; and (2) suggestions by defendant NYQUIST and defendant REGENTS.

DK (d) Suburban communities have performed acts of omission and commission with the purpose of excluding blacks from residing in the suburbs, thus creating and reinforcing educational segregation by containing the black population of the Area within the City of Buffalo. More specifically, they have—

DK (1) adopted land-use practices including zoning ordinances which set minimum floor area requirements and place restrictions upon multi-family dwellings;

DK (2) failed or refused to (a) establish local public housing authorities, (b) adopt workable programs, (c) authorize the use of federal rent supplements or, (d) take any other action to permit the construction of housing for low and moderate income families;

DK (3) failed to assure that those units of low and moderate income houses that have been constructed, are made available to black citizens, with the result that almost all such units are occupied exclusively by white citizens.

DK 2. THE STATE OF NEW YORK has created, maintained, permitted, condoned and perpetuated a dual school system, racial isolation, and a denial of equal educational opportunity, by the following acts of omission and commission.

DK (a) It has maintained school district boundaries that have enabled the local school districts outside Buffalo to keep the many Area black children out of the suburban schools and to contain them within the City of Buffalo.

DK (b) Despite the long-standing racial separation between Buffalo and the suburbs, it has refused to authorize defendant NYQUIST to order integration across district lines, or to take any action with respect to school districts which would require or encourage them to enter into arrangements for the reduction of racial isolation.

DK (c) The New York State legislature has recently deleted from the proposed state budget certain funds designed to enable districts to enter into cooperative arrangements to reduce racial isolation, even though it has provided such funds in the past from 1965 through 1971. Such refusal reflects the current attitude of the State of New York which is to take no steps to reduce racial isolation or to increase equal educational opportunity, but instead to impede and block efforts by state administrators who, in the exercise of their professional judgment and their oaths to support the Constitution of the United States, have sought to reduce racial isolation and to increase integration.

DK (d) The State's efforts to impede and frustrate efforts at reducing racial isolation are reflected in the enactment of Ch. 342 of the Laws of 1969, amending Education Law §3201. Said statute was struck down by this United States District Court for the Western District of New York in Lee v. Nyquist, 318 F. Supp. 710 (1970), aff'd, 402 U.S. 935 (1971). That Court found that the State of New York had engaged in an impermissible racial classification, had "accede(d) to local racial hostility", and had become involved in racial discrimination because "the New York Legislature has acted to make it more difficult for racial minorities to achieve goals that are in their interest."

DK (e) THE STATE OF NEW YORK has established local units of government and delegated to these units powers over land use and housing that have been utilized in a discriminatory manner as specified in paragraph XII B. 1.(d). Despite a stated policy of nondiscrimination in housing, the STATE has failed to prevent racial discrimination in housing by builders, state licensed real estate brokers, state regulated lending institutions and the state-owned governmental units, as revealed by the Governor's Committee to Review New York Laws and Procedures in the Area of Human Rights (1969) which declared: "New York's laws and procedures have failed to prevent discriminatory practices against the State's minority citizens. Latent acts of discrimination occur and recur, often without relief for those discriminated against, or punishment for those who violate the law."

DK (f) The State of New York has adopted a method of financing public schools that systematically disadvantages the Buffalo public schools, and thereby denies them equal education opportunity. Since black people are least able to move out of the City of Buffalo, see below, the suburban school districts will not admit such black students voluntarily, and the State of New York will not require or even encourage them to admit such students or permit its agents to require or encourage them, black students are the primary and permanent victims of such fiscal discrimination.

DK (g) Defendant NYQUIST has approved the construction of schools outside the City of Buffalo with full knowledge that such schools were intended to and will enroll only white children.

DK 3. THE FEDERAL GOVERNMENT has participated substantially in creating, permitting, condoning, maintaining, and perpetuating a dual and segregated school system by the following acts of commission and omission:

DK 1. Through its agent, the Federal Housing Administration (FHA), it has financed and assisted the construction of new communities, subdivisions, and dwelling units in the Area in a manner expressly designed to, and which has operated to, exclude and segregate black people. The FHA has accomplished the exclusion and segregation of black people through exclusive policies designed to establish racially and economically homogeneous communities through the use of racially restrictive covenants, and exclusionary zoning ordinances. Although these policies of racial segregation and exclusion have been nominally repealed, their effects in the Area continue and FHA has failed to take any effective action to undo the effect of past discrimination. Further, new programs administered by FHA such as those authorized by the Housing and Urban Development Act of 1968, to subsidize the purchase and rental of homes by low and moderate income families have operated to exclude and segregate black people by race. The FHA has failed and refused to prevent the construction of new homes in suburban communities reserved almost exclusively for white people and the confinement of black people to dwelling units, largely existing housing and rental units, within the City of Buffalo. Because black children are not permitted by state and local government to attend suburban schools unless they live in the relevant area, government participation in the creation and maintenance of residential segregation has contributed to the creation and perpetuation of a dual and racially segregated school system.

DK B. A disproportionate amount of low rent public housing constructed and operated with federal funds has been built in residental areas of minority concentration, thus perpetuating and reinforcing patterns of residential segregation. Under the urban renewal program administered by the Federal Government, black people have been dislocated from their homes and relocated in residential areas of minority concentration, thus perpetuating and reinforcing patterns of residential segregation.

XIII

DK No valid educational or other goals are served by the above policies, practices and acts of commission and omission, that could not equally be served by other district configurations or other alternative forms of organization that do not produce the segregation and denial of equal educational opportunity existing in the Area public schools.

XIV

HARM TO PLAINTIFFS

a A. Racial isolation inevitably denies equal educational opportunity to black and white children. Defendant REGENTS have so found, as have numerous other governmental and expert studies and agencies.

Deny ~~admit~~ B. Plaintiffs and members of their class are suffering irreparable injury from such racial isolation and denial of equal educational opportunity, and have no adequate remedy at law.

XV

DK Plaintiffs and other members of their class have made numerous demands on defendants to end the racial segregation described herein, but to no avail.

XVI

admit qualifiedly

Such segregation violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, and 42 U.S.C. §1983.

WHEREFORE, plaintiffs request this Court to order that:

1. Defendants end the racial isolation in the public schools of the Area in a manner consistent

with sound educational and other considerations;

2. Defendants be preliminarily and permanently enjoined from the various acts of omission and commission that have created, maintained and perpetuated the racial isolation in the public schools of the Area;

3. Defendants pay the reasonable costs of this action;

4. Such other and further relief as is appropriate including reasonable attorneys' fees.

Respectfully submitted,

WILL GIBSON
RICHARD F. GRIFFIN
DANNYE HOLLEY
EDWARD I. KOREN
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NORMAN CHACHKIN
10 Columbus Circle
New York, New York

ATTORNEYS FOR THE PLAINTIFFS

Dated: [illegible]
June 26, 1972

Defendants' Nyquist and Board of Regents Affidavit and Notice of Motion to Dismiss Complaint.

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

GEORGE ARTHUR, NORMAN GOLDFARB, WILLIAM and WILHELMINA P. SEALES, JOHN MEDIGE, and the CITIZENS COUNCIL FOR HUMAN RELATIONS, INC. and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, BUFFALO BRANCH,

Plaintiffs,

-against-

EWALD B. NYQUIST, Commissioner of Education, THE BOARD OF REGENTS OF THE STATE OF NEW YORK, JOSEPH MANCH, Superintendent of Schools of the City of Buffalo, THE BOARD OF EDUCATION OF THE CITY OF BUFFALO,

Defendants.

MOTION TO
DISMISS THE
COMPLAINT

1972 Civil 325

Sirs:

PLEASE TAKE NOTICE that upon the annexed affidavit of Jean M. Coon, sworn to the 27th day of July, 1972, and upon the complaint herein, the defendants Nyquist and Board of Regents will move this Court at a term thereof, Part I, held in the United States Court House in the City of Buffalo, on the 28th day of August, 1972, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing the complaint herein on the ground that the Court lacks jurisdiction over the subject matter of the action; and on the further ground that the complaint does not state a cause of action upon which relief can be granted either against the defendants Nyquist and Board of Regents or generally; and on the further ground that plaintiffs have failed to join all proper parties to secure the relief demanded in the complaint; and for such other and further relief as the Court may deem just and

Dated: Albany, New York
July 27, 1972

Yours, etc.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for defendants
Nyquist and Board of Regents

By Jean M. Coon
(Mrs.) Jean M. Coon
Assistant Solicitor General
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Albany, New York 12224
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Defendants' Nyquist and Board of Regents Affidavit and Notice of Motion to Dismiss Complaint.

TO:

Hon. John K. Adams
Clerk
United States District Court
United States Court House
Niagara Square
Buffalo, New York 14202

Herman Schwartz, Esq.
Attorney for plaintiffs
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Buffalo, New York 14202

Affidavit of Jean M. Coon in Support of Motion.

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

GEORGE ARTHUR, NORMAN GOLDFARB, WILLIAM and WILHELMINA P. SEALES, JOHN MEDIGE, and the CITIZENS COUNCIL FOR HUMAN RELATIONS, INC. and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, BUFFALO BRANCH,

Plaintiffs,

-against-

AFFIDAVIT

EWALD B. NYQUIST, Commissioner of Education, THE BOARD OF REGENTS OF THE STATE OF NEW YORK, JOSEPH MANCH, Superintendent of Schools of the City of Buffalo, THE BOARD OF EDUCATION OF THE CITY OF BUFFALO,

Defendants.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:
CITY OF ALBANY)

JEAN M. COON, being duly sworn, deposes and says:

1. She is the Assistant Solicitor General in the office of Louis J. Lefkowitz, Attorney General of the State of New York, counsel for the defendants, Nyquist and Board of Regents herein, and is fully familiar with the facts and circumstances of this case.

2. This affidavit is made in support of the motion to dismiss the complaint herein.

3. Plaintiffs have commenced this action claiming that the defendants, acting under color of State law, have deprived plaintiffs of rights under the Fourteenth Amendment to the Constitution of the United States by "creating, maintaining, permitting, condoning and perpetuating racially segregated schools in the City of Buffalo and in the Buffalo Metropolitan area." Plaintiffs seek a judgment of this Court ordering that the defendants "end racial isolation in the public schools of the area in a manner consistent with sound educational and other considerations" and enjoining defendants from the "various acts of omission and commission that have created, maintained and perpetuated racial isolation in the public schools of the area".

4. In their complaint, plaintiffs allege that the public schools in the city of Buffalo have a high and increasing degree of racial segregation. They allege that the proportion of black and Spanish surnamed children in the Buffalo school system has been increasing and that also the number of schools which are "racially identifiable" as black schools has increased and that the teaching and supervisory personnel who are black are few in number and are assigned to predominantly black schools. Plaintiffs allege that the racial isolation and segregation in the Buffalo schools is educationally detrimental to students in the Buffalo schools and denies them equal educational opportunity.

5. Plaintiffs allege that the racial segregation of the Buffalo schools is the result of policies, practices, customs and acts of omission and commission by the defendants and by other governmental agencies and units of the City of Buffalo, State of New York and the United States. Specifically, plaintiffs allege that the Board of Education of the City of Buffalo has adopted practices with the purpose or effect of increasing racial segregation, through establishing attendance zones which ensure maximum segregation, by constructing new schools in all-black areas, by establishing optional attendance zones which allow white students to transfer out of integrated schools, by permitting students to transfer out of integrated neighborhood schools for reasons such as "social adjustment" or "psychological problems", by permitting transfers for such optional courses as Polish language, and by failing to comply with recommendations for integration of the schools or to comply with the orders of the defendant State Commissioner of Education to integrate the schools.

6. Plaintiffs allege that the Common Council of the City of Buffalo, which is not a defendant in this action, has adopted practices and policies which further racial segregation in the schools, such as prohibiting the use of portable classrooms, as recommended by the Board of Education for the purpose of racial integration. That ordinance was, however, held unconstitutional in 1968. Plaintiffs allege that the Council has failed to provide

funding for the development of integrated middle schools and comprehensive high schools; that the Council has refused to create a fair housing law covering owner-occupied, two family housing, which housing is not covered under State law, and that that refusal has perpetuated racial segregation in housing in the City of Buffalo; and that the Council has opposed transportation of pupils to achieve integration.

7. Plaintiffs allege that the Mayor of the City of Buffalo, who is not a party to this action, has appointed at least one member of the Board of Education for the purpose of preventing bussing for the purpose of racial integration; and that the Mayor has deleted, from the Capital Budget of the city, funds for the construction of middle schools designed to achieve racial balance.

8. Plaintiffs allege in their complaint that the Municipal Housing Authority of the City of Buffalo, which is not a party to this action, has condoned and encouraged housing segregation, and that prior to 1950 (but not since that date) the Authority selected and assigned tenants based upon race.

9. Plaintiffs allege in their complaint that various State agencies have contributed to the perpetuation of racially segregated schools in the City of Buffalo. Specifically, they allege that the Legislature, which is not a party to this action, enacted a statute, subsequently held unconstitutional, which prohibited racial balance measures; that defendants Nyquist and Board of Regents permitted construction of schools which they "knew" would perpetuate racial segregation; and that State agencies have "failed to exercise their powers to require the City of Buffalo and defendant Board to reduce racial segregation in the Buffalo school system".

10. Plaintiffs further allege that the Federal Government, through its agency the Federal Housing Authority, which is not a party to this action, has fostered and encouraged the development of residential racial segregation by "cooperating with realtors, lending agencies and others, in restricting and containing black persons within certain residential areas; by

refusing financing to housing that was not in racially and socially homogenous and 'harmonious' areas; and by encouraging restrictive covenants". Plaintiffs concede that those practices occurred many years in the past and do not presently continue, but contend that the FHA should take steps to undo the impact of those past policies and practices.

11. Plaintiffs also allege that the community of interest which exists throughout the entire Buffalo Metropolitan area should require cooperative arrangements between the suburban school districts and the city district to end racial isolation in the Buffalo schools and further allege that the suburban districts, who are not parties to this action, have acted to exclude black children resident in the city school district from enrollment in the suburban districts.

12. Plaintiffs allege that suburban communities, who are not parties to this action, have promoted racial segregation in housing through zoning ordinances, and by failure to provide low income housing available to black citizens.

13. Plaintiffs further allege that the State of New York, which is not specifically a party to this action, has maintained a dual school system in the State by maintaining school district boundaries which prevent the integration of suburban schools with those in the city of Buffalo, by refusal to authorize the ordering of integration across district lines, by eliminating from the current State budget funds previously provided to promote racial balance, by the establishing of local units of government with control over local land uses, by failing to prevent all racial discrimination in housing, by school financing which allegedly discriminates against city schools, and by permitting construction of schools outside the city of Buffalo which would house only white children. The complaint does not allege that these acts or omissions by the State were designed to segregate the schools, but rather that this was the fortuitous result of those acts.

14. Plaintiffs allege that the Federal Government through its agencies, specifically the Federal Housing Administration, none of which agencies are parties to this action, has contributed to the maintenance of a dual school system in the Buffalo Metropolitan area by failure to take steps to undo past racial policies, by failure to prevent the construction of suburban housing which would be almost exclusively for the occupancy of white persons, by failure to provide low income housing except in areas of minority concentration, and by the administration of urban renewal programs which have dislocated black people from their homes and relocated them in areas of minority concentration.

15. Basically, plaintiffs allege that residential patterns, combined with the boundary lines of political subdivisions created many years ago, have resulted in racial segregation of the Buffalo schools and that defendants and others have done nothing to undo that segregation.

16. Plaintiffs do admit, however, that the defendants Nyquist and Board of Regents have adopted policies calling for racial integration in the schools of the State, that the State Commissioner of Education has directed the Board of Education of the City of Buffalo to end racial segregation in the city schools, that that direction was reiterated this year, and that the Board of Education is still subject to an order to racially integrate the schools.

17. The racial segregation of the Buffalo schools is, according to the allegations of the complaint, the result not just of actions or omissions on the part of the named defendants in this action, but also the result of the actions or omissions of other persons and agencies who are not parties to this action. No matter how willing the Buffalo Board of Education might be to comply with the direction of the State Commissioner of Education to further integrate the schools of the city, the failure or inability of the Common Council of the City to provide needed funds, whether for bussing, construction of new schools, hiring

more minority personnel, or maintenance of new schools, could prevent effective action on the part of the Board. No matter how willing the State Commissioner of Education is to further implement his order to end racial imbalance in the Buffalo schools, if the State Legislature does not appropriate funds for this purpose or if the city of Buffalo, as opposed to the Board of Education or school officials, is unable or unwilling to provide funding, if suburban districts do not wish to accept nonresident pupils, and if State legislation does not permit the consolidation of suburban school districts with the Buffalo district, either voluntarily or on the directive of the Commissioner of Education, there is a severe limitation placed upon the effectiveness of any directive of the Commissioner of Education and upon his powers to enforce their directive.

18. If moneys are not made available, either by the Congress or by the people of this State, for low income housing in suburban areas, and if public transportation is not made available in suburban areas to serve low income housing, then residential patterns will without any invidious intent continue to result in segregated housing between cities and suburban areas, no matter how willing those suburbs and their residents might be to accept minority residents.

19. Plaintiffs having alleged that acts of nonparties have combined with those acts or omissions alleged in relation to the named defendants to deny to the plaintiffs rights under the Fourteenth Amendment, the complaint is deficient in that plaintiffs have failed to join parties necessary for the granting of the complete relief sought in the complaint. Consequently, unless those parties are joined, the complaint should be dismissed since the relief demanded in the complaint cannot be effectively or completely granted without the presence of those other parties.

20. In the alternative, if other parties whose acts are alleged to contribute to racial segregation of the schools cannot be joined, the complaint should be amended to state only the

individual acts or omissions alleged to have been those of the named defendants, so that the issues may be presented in such a way that full and complete relief may be granted against the defendants, if any such relief is warranted under the applicable facts or law.

21. The complaint states no acts on the part of the defendants Nyquist and Board of Regents which have created a dual school system. The complaint alleges only that they have failed to act effectively to end racial segregation in the Buffalo schools, although conceding that it is the policy of both defendants to urge, promote and direct racial integration in the schools. Basically, plaintiffs complain that the defendants Nyquist and the Board of Regents have not done enough fast enough. The powers of those defendants are, however, limited by law. For example, the Education Law does not provide for the compulsory consolidation of school districts, and specifically recognizes and provides for the separate existence of the Buffalo City School District. The powers of the State defendants are also limited by other considerations, such as the financial ability of a school district and by the amount of State aid available to assist districts.

22. The only specific acts on the part of the defendant Nyquist of which plaintiffs complain, are the approvals of the construction of new schools in the city in black neighborhoods or in locations where the schools would likely be predominantly black and the approval of construction of new schools in all white suburbs. In view of the lack of power in the Commission to order the consolidation of suburban and city school districts and the limitations upon his powers concerning the integration of city schools, refusal to approve the construction of needed school buildings, solely because they would not be fully integrated, would be a reckless and irresponsible act on the part of the Commission and would have denied modern facilities to black students. That allegation of the complaint also, therefore, states no cause of action against the defendant Nyquist.

23. However, plaintiffs might wish to denominate it, the school system of the State of New York is unitary; any segregation or racial imbalance is the result of residential patterns, not de jure segregation. Plaintiffs allege, as to the defendants Nyquist and Board of Regents, only that they have not effectively ended de facto segregation of the Buffalo schools. There is, however, no constitutional mandate that they do so. The Supreme Court has not held that de facto segregation resulting from residential patterns is unconstitutional; the Court has not held that residential zoning is unconstitutional; the Court has not held that political subdivision boundary lines are unconstitutional, or that home rule powers granted to local governments are unconstitutional. There is no constitutional mandate upon the defendants Nyquist and Board of Regents to end racial imbalance or de facto segregation in the Buffalo schools; there is, therefore, no cause of action against those defendants stated in the complaint.

24. There is also no cause of action stated generally in the complaint. Basically, plaintiffs seek an end to de facto segregation of the schools. There is no constitutional mandate to end racial imbalance resulting from residential patterns or economic factors. There is, therefore, no cause of action stated in the complaint upon which this Court may grant relief.

25. The rationale of plaintiff's complaint is that any school segregation, even though it is the result of residential or economic patterns without any intentional creation of a dual school system, is constitutionally impermissible. The Supreme Court of the United States has not, however, so held or held that there is any constitutional duty imposed upon communities to undo de facto segregation. The Circuit Courts have consistently held that there is no such constitutional duty, and the Supreme Court has denied certiorari in all such cases. The few District Court decisions which have held that there is a constitutional duty to end racial imbalance have not fared well at the hands of the appellate courts (see, *e.g.*, School District No. 1, Denver, Colorado v. Keyes, 445 F. 2d 990 [1971], rev'g 313 F. Supp. 61;

and Bradley v. School Board of Richmond [4th Cir., June 5 , 1972]).

26. For a violation of Fourteenth Amendment rights, under the decision of Brown v. Board of Education of Topeka (347 U. S. 483 [1954]), there must be a State act in creating racial segregation, rather than adventitious development. The allegations of the complaint herein amount to no more than allegations of adventitious development.

27. Defendants Nyquist and the Board of Regents are committed to a policy of achieving integration to the greatest extent feasible in the public schools of the State, primarily as a matter of educational policy. Plaintiffs seek an adjudication converting this issue of educational policy solely into one of constitutional law. The Constitution, we submit, does not require that result.

WHEREFORE, deponent respectfully requests that the complaint be dismissed on the ground that the Court lacks jurisdiction over the subject matter of the action; and on the further ground that the complaint does not state a cause of action upon which relief can be granted either against the defendants Nyquist and Board of Regents or generally; and on the further ground that plaintiffs have failed to join all proper and necessary parties to secure the relief demanded in the complaint; and for such other and further relief as to the Court may deem just and proper.

Jean M Coon

Jean M. Coon

Sworn to before me this
27th day of July, 1972

Ruth V. Iles

RUTH V. ILES
Notary Public, State of New York
Qualified in Onondaga County
Commission Expires March 30, 1974

Defendants' Joseph Manch, Board of Education, City of Buffalo to Dismiss Class Action etc.

ECEIVED
7 1972
DEPARTMENT
OFFICE

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

GEORGE ARTHUR, NORMAN GOLDFARB,
WILLIAM AND WILHELMINA P. SEALES,
JOHN MEDIGE, and THE CITIZENS
COUNCIL FOR HUMAN RELATIONS, INC.
and NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
BUFFALO BRANCH,

Plaintiffs

v.

EWALD P. NYQUIST, COMMISSIONER OF
EDUCATION, THE BOARD OF REGENTS OF
THE STATE OF NEW YORK, JOSEPH MANCH,
SUPERINTENDENT OF SCHOOLS OF THE
CITY OF BUFFALO, THE BOARD OF
EDUCATION OF THE CITY OF BUFFALO,

Defendants.

NOTICE OF MOTION

CIV-1972-325

SIRS:

PLEASE TAKE NOTICE that upon the Complaint herein, the defendants, Joseph Manch, Superintendent of Schools of the City of Buffalo and the Board of Education of the City of Buffalo, move this Court as follows:

1. Under FRCP Rule 23 (c) (1) to dismiss the class action;
2. Under FRCP Rule 12 (b) to dismiss the action against the defendants Joseph Manch, Superintendent of Schools of

the City of Buffalo and the Board of Education of the City of Buffalo for failure to state a claim upon which relief can be granted;

3. Under FRCP Rule 19 for an Order joining certain parties.

DATED: BUFFALO, NEW YORK
August 3 [illegible] 1972

ANTHONY MANGUSO
ANTHONY MANGUSO,
Corporation Counsel,
attorney for defendants
Joseph Manch, Superintendent of Schools
of the City of Buffalo
and the Board of
Education of the City
of Buffalo,
1100 City Hall
No. 65 Niagara Square
Buffalo, New York 14202

NOTICE OF MOTION

To: Herman Schwartz, Esq.
attorney for plaintiffs
832 Prudential Building
Buffalo, New York 14202

Louis J. Lefkowitz,
Attorney General of the
State of New York,
attorney for defendants
Ewald B. Nyguist and the
Board of Regents of the
State of New York
The Capitol
Albany, New York 12224

PLEASE TAKE NOTICE that the undersigned will bring on the above Motions for a hearing before this Court at the United States Court House, Niagara Square, Buffalo, New York, on the 28th day of August, 1972 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

ANTHONY MANGUSO

DATED: BUFFALO, NEW YORK
August 3, 1972.

ANTHONY MANGUSO,
Corporation Counsel,
attorney for defendants
Joseph Manch, Superintendent of Schools of the
City of Buffalo and the
Board of Education of
the City of Buffalo,
1100 City Hall
No. 65 Niagara Square
Buffalo, New York 14202

JJMcL/hg

RECEIVED
Department of Law
Buffalo, N.Y.
MAR 29 1972
CHARGE TO

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

GEORGE ARTHUR, NORMAN GOLDFARB, WILLIAM and
WILHELMINA P. SEALES, JOHN MELIGE, and THE
CITIZENS COUNCIL FOR HUMAN RELATIONS, INC. and
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, BUFFALO BRANCH,

Plaintiffs,

Civ. 1972 325

-against-

ANSWER ON BEHALF
OF STATE DEFENDANTS

EWALD B. NYQUIST, COMMISSIONER OF EDUCATION,
THE BOARD OF REGENTS OF THE STATE OF NEW YORK,
JOSEPH MANCH, SUPERINTENDENT OF SCHOOLS OF THE
CITY OF BUFFALO, THE BOARD OF EDUCATION OF THE
CITY OF BUFFALO,

Defendants.

The defendants Ewald B. Nyquist, Commissioner of Education of the State of New York, and The Board of Regents of the University of the State of New York, by their attorney, Louis J. Lefkowitz, Attorney General of the State of New York, for their answer to the complaint herein:

1. Admit the allegations contained in the paragraphs numbered II-C, IV-A, IV-B, and IV-D of the complaint herein.

2. Deny each and every allegation contained in the paragraphs numbered XIII and XVI of the complaint herein.

3. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs numbered III-A, III-B, V-B, XII-B (2-e), and XV of the complaint herein.

4. As to the allegations contained in the paragraph numbered I of the complaint herein, admit that that paragraph states the allegations of the plaintiffs as to the nature of the action and jurisdiction therein, but deny the allegations thereof insofar as they conclude that a constitutional violation exists.

5. As to the allegations contained in the paragraph numbered II of the complaint herein, admit that the paragraph alleges that this is a class action, but deny the conclusion that a

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valid class is stated and further allege that a class to be valid, must be sufficiently definite that its members may elect to exclude themselves from the class as represented by the named plaintiffs and be given notice of that right of election (Rule 23 (c)(2)) and that the class as stated in the complaint is not sufficiently definite that such notice can be given.

6. As to the allegations contained in the paragraph numbered IV-C of the complaint herein, admit that the Regents of the University of the State of New York establish policies, practices, customs and usages generally applicable to the public school systems of the State of New York, but deny that the Regents have plenary power over the operation of the schools of the State of New York, including the selection of sites for school construction, and deny that the Regents are charged with an affirmative constitutional duty to exercise an alleged power to afford equal opportunity to all citizens.

7. As to the allegations contained in the paragraph numbered V-A of the complaint herein, admit the statistics alleged in the paragraph but deny that any conclusion may be drawn therefrom that increasing minority population in the schools results from unconstitutional acts of the State defendants.

8. As to the allegations contained in the paragraph numbered VI of the complaint herein, admit that the Regents' policy is to eliminate racial segregation in the public schools of the State and that the defendant Commissioner of Education and his predecessor have exerted whatever power they have to achieve that result, but deny that the 1969 report cited in

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the complaint based its conclusions solely on racial segregation in the schools.

9. As to the allegations contained in the paragraph numbered VII of the complaint herein, deny each and every allegation thereof insofar as acts of the State defendants are alleged, and as to allegations relating acts of persons municipalities, or governmental agencies which are not a party to this action, deny that the allegations so stated are relevant or material to this action, and as to the allegations contained in paragraph VII (E)(2) of the complaint, deny each and every allegation thereof and allege that the only power of approval possessed by the Commissioner of Education, pursuant to Education Law, §§ 408 and 409, is to reject plans and specifications for school buildings which do not meet certain health and safety requirements and, insofar as building sites are concerned, the Commissioner's approval powers under section 408(3) do not include consideration of racial composition of the projected school population as a criterion. As to the allegations contained in paragraph VII (E)(3) of the complaint, deny each and every allegation contained therein and allege that the Commissioner of Education possesses no such plenary power as is alleged in that paragraph.

10. As to the allegations contained in the paragraph numbered VIII of the complaint herein, deny each and every allegation contained therein and allege that, in the absence of an appeal to the Commissioner of Education, no action can be taken by either the Commissioner or the Regents.

11. As to the allegations contained in the paragraph numbered IX of the complaint herein, admit the allegations

therein but additionally allege that if any school district boundaries in the Buffalo Metropolitan Area are to be changed to include all or part of the Buffalo City School District, the first prerequisite would be an amendment to various sections of the State Constitution, specifically Article VIII, sections 4, 10 and 11 and also Article IX among others.

12. As to the allegations contained in the paragraph numbered X of the complaint herein, admit the allegations thereof, but further allege that the exchange of pupils between existing districts is solely a matter of local choice and cannot be imposed upon the districts by the defendants.

13. As to the allegations contained in the paragraph numbered XI of the complaint herein, admit the allegations thereof, except deny the allegations contained in the sub paragraph numbered B thereof which allege that residential immobility of the black population is State imposed, and further allege that arrangements between city and suburban school districts to end racial isolation are presently matters of local school district choice and would require statutory and possibly constitutional changes before such arrangements could be compelled by any of the State defendants.

14. As to the allegations contained in the paragraph numbered XII-A of the complaint herein, deny each and every allegation contained therein and further allege that changes in school district boundaries involving a fiscally dependent school district such as the City of Buffalo would require an act of the Legislature to authorize such changes and would require procedures such as those under Education Law § 1524 1526, or 1801 et seq. but in any event such boundary changes are not within the power of the defendants to initiate.

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15. As to the allegations contained in the paragraph numbered XII B of the complaint herein, deny that any acts of the State defendants have had the purpose and effect of creating, maintaining, permitting, condoning and perpetuating racial isolation and segregated school systems in the Area."

16. As to the allegations contained in the paragraph numbered XII-B(1) of the complaint herein, deny that the allegations contained therein have any relevance as to the causes of action alleged against the State defendants and further allege that the only power of the State defendants is to make suggestions and recommendations to the school districts.

17. As to the allegations contained in the paragraph numbered XII-B(2) of the complaint herein, deny each and every allegation contained in the first paragraph thereof, and, as to the allegations of subparagraph (a) thereof, deny each and every allegation thereof and further allege that changes in school district boundaries would require an act of the Legislature authorizing such changes and that, if changes were authorized in the manner presently provided for changes in fiscally independent school district boundaries the State defendants would have no power to initiate such changes. As to the allegations contained in subparagraph (b) thereof, deny the materiality or relevance of such allegations and further allege that the "State of New York" as referred to in this paragraph is not sufficiently defined so as to indicate what officer or agency is thought to have the power to issue such orders to the State defendants, and further allege that, if

the State defendants are to be granted the power to issue such orders, legislation is necessary since no such legislation presently exists which would confer such powers on the State defendants. As to the allegations of subparagraph (c) of said paragraph, admit that funds have been deleted from the State appropriations in 1972, but deny that any particular legislative opinion, attitude, or interest can be concluded from that fact in view of the substantial reductions in appropriations for all State departments in 1972. As to the allegations of subparagraph (d), admit the allegations thereof. As to the allegations contained in subparagraph (f) of said paragraph, deny that the method of financing the public schools adopted by the State was adopted with the intent to deny equal educational opportunity, admit that fiscal dependency is not desirable from a financial and educational point of view, and further allege that any change from fiscal dependency to independence requires legislative action, and constitutional changes as well. As to the allegations contained in subparagraph (g) of said paragraph deny each and every allegation thereof and further allege that the Education Law of the State of New York gives the Commissioner of Education and the Regents no power to act on racial imbalance.

18. As to the allegations contained in the paragraph numbered XII-B(3) of the complaint herein, deny that any acts of the Federal government, which is not a party to this action, are relevant in determining liability in the causes of action stated against the named defendants, or in determining any of the issues of this action.

19. As to the allegations contained in the paragraph numbered XIV-A of the complaint herein, admit that racial

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isolation is undesirable educationally, but deny that racial isolation which is not State imposed deprives the plaintiffs of any constitutional rights.

20. As to the allegations contained in the paragraph numbered XIV-B of the complaint herein, deny knowledge or information sufficient to form a belief as to the status of the individual plaintiffs or their children.

FOR A FIRST SEPARATE AND DISTINCT
DEFENSE TO THE COMPLAINT HEREIN,
ALLEGE:

21. The Supreme Court of the United States has held that absolute equality of educational opportunity is not constitutionally required. The only cases in which the Supreme Court has required integration of school districts are those which have involved state-imposed segregation or the after-effects of such segregation.

22. In cases involving school segregation resulting solely from residential pattern and municipal boundaries, the Supreme Court of the United States has not ruled that the Courts may order the integration of city and suburban school districts or that such school segregation is unconstitutional.

23. While school segregation resulting from residential or geographic patterns may be educationally undesirable, it is not constitutionally invalid, nor does such segregation deprive plaintiffs of equal protection of the laws.

24. The school segregation in the Buffalo city school district and the racial disparity in enrollments between the city school district and suburban districts are the result of

residential patterns [illegible] result of state [illegible] have been deprived of [illegible] constitutional rights.

WHEREFORE, defendants Ewald B. Nyquist and Board of Regents respectfully request that this Court enter a judgment dismissing the complaint herein, specifically as to the State defendants and declaring that no acts of the defendants, specifically the State defendants, have created, maintained and perpetuated racial isolation or segregation in the schools of the Buffalo area and denying plaintiffs' demand that defendants pay the costs of this action and/or attorneys' fees.

Dated: March 2[illegible], 1973.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Nyquist and Board of Regents
Office and P.O. Address
The Capitol
Albany, New York 12224
Telephone: (518) 474-7138

By Jean M. Coon
JEAN M. COON
Assistant Solicitor General

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Plaintiffs' Motion to Add Party Defendants, the Common Council of the City of Buffalo and Its Members.

RECEIVED
Department of Law
Buffalo, N.Y.
MAR 21 1974
CHARGE TO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civil Action
No. 1972-325

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4/5

GEORGE ARTHUR, NORMAN GOLDFARB, WILLIAM and WILHELMINA P. SEALES, JOHN MEDIGE, and THE CITIZENS COUNCIL FOR HUMAN RELATIONS, INC., and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, BUFFALO BRANCH

Plaintiffs

-vs-

EWALD P. NYQUIST, COMMISSIONER OF EDUCATION, THE BOARD OF REGENTS OF THE STATE OF NEW YORK, JOSEPH MANCH, SUPERINTENDENT OF SCHOOLS OF THE CITY OF BUFFALO, THE BOARD OF EDUCATION OF THE CITY OF BUFFALO

Defendants

MOTION TO ADD
PARTY DEFENDANTS

SIRS:

PLEASE TAKE NOTICE, that upon the attached statement of Richard F. Griffin, and upon all pleadings, proceedings and transcripts of depositions herein, the undersigned will move this Court at a Special Term thereof to be held by the Hon. John T. Curtin in the U. S. Courthouse, Buffalo, New York at 10:00 a.m. on April 5, 1974 for an order permitting the plaintiffs to add the Common Council of the City of Buffalo and its members as party defendants to this action.

Dated: Buffalo, New York
March 19, 1974

Yours, etc.,

HERMAN SCHWARTZ
RICHARD F. GRIFFIN
Attorneys for Plaintiffs
Office and P.O. Address
c/o Moot, Sprague, Marcy, Landy,
Fernbach & Smythe
2300 Erie County Savings Bank Building
Buffalo, New York 14202

Plaintiffs' Motion to Add Party Defendants, the Commom Council of the City of Buffalo and Its Members.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civil Action
No. 1972-325

GEORGE ARTHUR, NORMAN GOLDFARB,
WILLIAM and WILHELMINA P. SEALES,
JOHN MEDIGE, and THE CITIZENS
COUNCIL FOR HUMAN RELATIONS, INC.
and NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
BUFFALO BRANCH
Plaintiffs

-vs-

STATEMENT IN
SUPPORT OF MOTION

EWALD P. NYQUIST, COMMISSIONER OF
EDUCATION, THE BOARD OF REGENTS OF
THE STATE OF NEW YORK, JOSEPH MANCH,
SUPERINTENDENT OF SCHOOLS OF THE
CITY OF BUFFALO, THE BOARD OF
EDUCATION OF THE CITY OF BUFFALO
Defendants

RICHARD F. GRIFFIN makes the following statement:

1. He is an attorney at law duly admitted to practice in the Western District of New York and is associated as one of the attorneys for plaintiffs in this action.

2. This action seeks judgment and complete relief from segregation of the Buffalo Public Schools.

3. That the Common Council of the City of Buffalo and its members are not now parties to this action but by reason of the fact that the appropriation of moneys to accomplish programs of the Buffalo Board of Education is made by the Common Council plaintiffs may not be able to obtain efficacious relief unless said body and its members are joined as party defendants.

WHEREFORE, the plaintiffs request an order granting permission to add the Common Council of the City of Buffalo and its members as parties defendant.

Richard F. Griffin

Plaintiffs' Motion to Add Party Defendants, the Common Council of the City of Buffalo and Its Members.

TO:

ANTHONY MANGUSO, ESQ.
Corporation Counsel, City of Buffalo
City Hall
Buffalo, New York 14202

LOUIS J. LEFKOWITZ, ESQ.
Attorney General, State of New York
The Capitol
Albany, New York 12200

Attention: Jean M. Coon, Esq.
Assistant Solicitor General

Order Adding Parties Defendant and Amending Title of Action.

At a Motion Term of the United States
District Court for the Western District
of New York held in the U.S. Courthouse,
Buffalo, New York on the 8th day of
April, 1974.

PRESENT HON. JOHN T. CURTIN
District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GEORGE ARTHUR, NORMAN GOLDFARB,
WILLIAM and WILHELMINA P. SEALES,
JOHN MEDIGE, and THE CITIZENS
COUNCIL FOR HUMAN RELATIONS, INC.,
and NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
BUFFALO BRANCH,

Plaintiffs,

-against-

EWALD P. NYQUIST, COMMISSIONER OF
EDUCATION, THE BOARD OF REGENTS OF
THE STATE OF NEW YORK, JOSEPH MANCH,
SUPERINTENDENT OF SCHOOLS OF THE
CITY OF BUFFALO, THE BOARD OF
EDUCATION OF THE CITY OF BUFFALO,

Defendants.

Civil Action
No. 1972-375

ORDER ADDING
PARTIES DEFENDANT
AND AMENDING TITLE
OF ACTION

The plaintiffs having moved the Court for an order making the Common Council of the City of Buffalo and its members as a party defendant, and the motion having been returnable on April 8, 1974, and the defendants JOSEPH MANCH, SUPERINTENDENT OF SCHOOLS OF THE CITY OF BUFFALO and THE BOARD OF EDUCATION OF THE CITY OF BUFFALO having appeared by Anthony Manguso, Esq., Corporation Counsel, City of Buffalo by Anthony Gregory, Assistant Corporation Counsel, and the defendants EWALD P. NYQUIST, COMMISSIONER OF EDUCATION, State of New York and THE BOARD OF REGENTS OF THE STATE OF NEW YORK having appeared by Louis J. Lefkowitz, Attorney General of the State of New York, Jean M. Coon, Assistant Solicitor General, upon the basis of an affi[illegible]t sworn to April [illegible], 1974 wherein no objection was made to the addition of the Common Council as a party but only if the Mayor of the City of Buffalo is also added as a party defendant, and the plaintiffs having orally moved the Court upon the return day to add the Honorable Stanley M. Makowski, Mayor of the City of Buffalo as an additional party defendant, and it appearing to the Court that said Common Council and Mayor of the City of Buffalo are persons whose presence is needed for a complete and just adjudication of the issues presented in this action, it is

ORDERED that the Common Council of the City of Buffalo and its members and the Mayor of the City of Buffalo, Stanley M. Makowski, be made parties defendant to this action, and it is further

ORDERED that the title of the within action shall be amended as follows:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GEORGE ARTHUR, NORMAN GOLDFARB,
WILLIAM and WILHELMINA P. SEALES,
JOHN MEDIGE, and THE CITIZENS
COUNCIL FOR HUMAN RELATIONS, INC.,
and NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
BUFFALO BRANCH,

Plaintiffs,

-against-

EWALD P. NYQUIST, COMMISSIONER OF
EDUCATION, THE BOARD OF REGENTS OF
THE STATE OF NEW YORK, JOSEPH MANCH,
SUPERINTENDENT OF SCHOOLS OF THE
CITY OF BUFFALO, THE BOARD OF
EDUCATION OF THE CITY OF BUFFALO,
STANLEY M. MAKOWSKI, MAYOR OF THE
CITY OF BUFFALO, and DELMAR L.

MITCHELL, RAYMOND LEWANDOWSKI, GUS
FRANCZYK, ALFREDA W. SLOMINSKI,
WILLIAM J. LAURIA, JOSEPH S. FORMA,
MICHAEL McCARTHY, WILLIAM B. HOYT,
GEORGE K. ARTHUR, RICHARD F.
OKONIEWSKI, HORACE C. JOHNSON, JOHN
A. RAMUNNO, ANTHONY M. MASIELLO,
DANIEL J. HIGGINS and WILLIAM A.
PRICE, constituting the members of
the COMMON COUNCIL OF THE CITY OF
BUFFALO,

Defendants.

ORDERED that the defendants, STANLEY M. MAKOWSKI, MAYOR OF THE CITY OF BUFFALO and the COMMON COUNCIL OF THE CITY OF BUFFALO shall serve their answer to the complaint herein within twenty (20) days after the entry of this order.

United States District Judge

Date:

Answer of Defendants Joseph Manch, Board of Education and Common Council.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

GEORGE ARTHUR, NORMAN GOLDFARB,
WILLIAM AND WILHELMINA P. SEALES,
JOHN MEDICE, and THE CITIZENS
COUNCIL FOR HUMAN RELATIONS, INC.
and NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
BUFFALO BRANCH
Plaintiffs

v.

EWALD P. NYQUIST, COMMISSIONER OF
EDUCATION, THE BOARD OF REGENTS OF
THE STATE OF NEW YORK, JOSEPH MANCH,
SUPERINTENDENT OF SCHOOLS OF THE
CITY OF BUFFALO, THE BOARD OF
EDUCATION OF THE CITY OF BUFFALO, and
THE COMMON COUNCIL OF THE CITY OF
BUFFALO
Defendants

ANSWER

1972 - 325

The defendants, JOSEPH MANCH, Superintendent of Schools of The City of Buffalo, THE BOARD OF EDUCATION of The City of Buffalo and THE COMMON COUNCIL of the City of Buffalo, by ANTHONY MANGUSO, Corporation Counsel, their Attorney, answering the Complaint herein, allege upon information and belief:

FIRST: Admit those allegations contained in paragraphs IV A and B; VII A, 1(b); VII A, 2(a)(b); VII A, 3, VII A, 3(a); VII A, 3(b)(1); VII A, 4(a)(1); VII A, 4(b); VII A, 5(b); VII A, 6; IX; X; XI A; and XIV A.

SECOND: Deny those allegations contained in paragraphs VII A; VII A, 3(b)(2); VII A, 4; VII B; VII B, 3; VII D,2; VII E, 3; XII A; XII B; XIV B.

THIRD: Lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs III A, B, and C; IV C and D; VI, VII C, 2; VII D, 1; VII E; VII F, 1; VII F; VIII; XI B; XI C; XII B, 1(a) [illegible] and [illegible]); X[illegible] and (3); XII B, [illegible] (d)(e)

(f) and (g); XII B, 3; XII B, 3 (1); XII B, 3B; XIII; and XV.

FOURTH: As to the allegations contained in the paragraph numbered I of the Complaint herein, admit that that paragraph states the allegations of the plaintiffs as to the nature of the action and jurisdiction therein but deny those allegations insofar as they conclude that a constitutional violation exists.

FIFTH: As to the allegations contained in the paragraph numbered II of the Complaint herein, admit that the paragraph alleges that this is a class action, but deny the conclusion that a valid class is stated, and further allege that a class, to be valid, must be sufficiently definite in order that its members may elect to exclude themselves from the class as represented by the named plaintiffs and be given notice of that right of election (Rule 23 (c)(2)) and that the class as stated in the Complaint is not sufficiently definite in order that such notice can be given.

SIXTH: As to the allegations contained in the paragraph numbered V A of the Complaint herein, admit the statistics alleged in the paragraph, but deny that any conclusion may be drawn therefrom, that increasing minority population in the schools results from unconstitutional acts of the defendants.

SEVENTH: As to the allegations contained in the paragraph numbered V B, admit that the teaching staff in schools of the City of Buffalo contains a small percentage of minority teachers, but deny that portion of the paragraph which alleges that minority personnel are systematically assigned largely to the predominantly black schools and contribute to the illegal and unconstitutional racial identifiability of such schools.

EIGHTH: With respect to the allegations contained in the paragraph numbered VII A, 1(a), admit the facts contained therein, but deny the conclusion drawn that the Board intentionally drew up the attendance zone in order to promote segregation.

NINTH: As to the allegations contained in the paragraph numbered VII A, 4(a)(2), admit the facts contained therein, but deny that any conclusions can be drawn that said inaction was racially motivated.

TENTH: As to the allegations contained in the paragraph numbered VII A, 5(2), admit that the Board has been ordered to integrate the Buffalo Public Schools by defendant Nyquist and his predecessor on occasions since February 15, 1965, but deny everything contained therein in the remaining portion of said paragraph.

ELEVENTH: As to the allegations contained in the paragraph numbered VII B, 1, admit that in July of 1968, the Common Council approved a City Ordinance, the legality of which was denied in subsequent court action, but deny that said Ordinance was adopted for purposes of promoting racial segregation.

TWELFTH: As to the allegations contained in the paragraph numbered VII B, 2, admit that the Board, in 1966, adopted a plan for reducing racial isolation in Buffalo, but deny that the Common Council, in failing to provide the necessary funds to implement such plan, was in any way motivated by racism.

THIRTEENTH: As to the allegations contained in the paragraph numbered VII B, 4, admit that in 1972 the Common Council voted to express its opposition to the cross-bussing of pupils to achieve integration, but deny that any unconstitutional conclusion can be drawn from said admission.

FOURTEENTH: As to the allegations contained in the paragraph numbered VII C. 1, admit that Frank A. Sedita, in February 1972, appointed Mrs. Carol E. Williams to the Board, but deny that such appointment was for the purposes of promoting segregation.

FIFTEENTH: As to the allegations contained in the paragraph numbered VII E, 2, admit the facts contained therein, but deny the conclusion that the construction of schools would perpetuate and promote racial segregation.

SIXTEENTH: As to the allegations contained in the paragraph numbered XVI, admit the general conclusion stated therein, but adamantly deny that such segregation exists in the Buffalo Public Schools.

FOR A FIRST AND SEPARATE AND
DISTINCT DEFENSE TO THE COM-
PLAINT HEREIN, ALLEGE:

SEVENTEENTH: That within the Buffalo Public School System isolated examples of racial imbalance admittedly exist, but these are not the result of School Board policies but rather, are the result of housing patterns beyond the control of the defendants herein.

EIGHTEENTH: That there doesnot exist today, nor has there ever existed, within the Buffalo School System, any State or locally imposed segregation.

NINETEENTH: While racial imbalance in a school system resulting solely from residential or geographical patterns may be educationally undesirable, it does not deprive plaintiffs of the equal protection of the laws and is not constitutionally invalid.

WHEREFORE, defendants JOSEPH MANCH, THE BOARD OF EDUCATION and the COMMON COUNCIL respectfully pray that this Court enter a judgment dismissing the Complaint herein specifically as to the CITY OF BUFFALO, defendant, and declaring that no acts of these defendants have created, maintained and perpetuated racial isolation, imbalance or segregation in the City of Buffalo Schools and denying plaintiffs' demand that the defendants pay the costs of this action and/or Attorneys fees.

Dated: Buffalo, New York, July 15, 1974.

ANTHONY MANGUSO
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JOSEPH MANCH, THE BOARD OF
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AG:akw

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GEORGE ARTHUR, et al.,

Plaintiffs

-vs-

EWALD P. NYQUIST, Commissioner, et al.,

Defendants

STIPULATION

Civ. Action No. 72-325

It is hereby stipulated by and between the parties hereto that:

Parties

2. Defendant Board of Education ("Board") is responsible for the policies, practices and operation of the Buffalo public school system.

3. Defendant Joseph Manch is and has been the Chief Executive Officer of such school system since 1957 by virtue of appointment of the Board.

4. Defendant Board of Regents ("Regents") is the governing body of the University of the State of New York. Subject to and in conformity with the laws of the State of New York, the Regents exercise legislative functions concerning the educational system of the State, determine its educational policies, and, except as to the judicial functions of the Commissioner of Education, establish rules for carrying into effect the laws and policies of the State, relating to education, and the functions, powers, duties, and trusts conferred and charged upon the University and the Education Department in accordance with Section 207 of the New York Education Law.

5. Defendant Ewald P. Nyquist is and has been the Chief Executive Officer of the Board of Regents and of the Education Department of New York State for at least the past five years.

6. Defendant Stanley M. Makowski is the elected Mayor of the City of Buffalo.

7. The remaining defendants Delmar Mitchell, et al., are elected members of the Common Council of the City of Buffalo.

8. The Common Council of the City of Buffalo is the chief legislative body of the City, and has the authority to pass city ordinances; it has the power to disapprove and disallow some or all of the budget proposed by the Buffalo Board of Education.

Racial Segregation of Students

9. According to the 1970 Census Report, the City of Buffalo had a population of 462,768 people, of whom 21% were non-white.

10. The Buffalo public schools had 61,060 students as of October, 1973, of which 46.7% were non-white. The school system contained 98 schools, including 77 elementary schools, 6 middle (4) and junior high (2) schools, 7 academic high schools, and 6 vocational schools.

11. In recent years, the degree of racial isolation in the Buffalo public schools has been increasing.

13. Since 1962-63, the percentage of non-white children in the Buffalo public school syst . has risen.

14. Non-white students constitute 45.8% of the student population as of the 1973-74 ethnic census, compared to 35.0% in 1966.

15. Most of the non-white students have been concentrated in those schools in which a majority of the student population is non-white.

16. Most of the white students have been concentrated in schools in which a majority of the student population is white. Of the 21,016 elementary school white students in Buffalo, 86% attended schools that were 75% or more white; 94.7% attended schools that were 65% white, and 48.7% attended schools that were 90% white.

17. (a) In 1973, of 77 elementary schools in Buffalo, 21 are 86-100% non-white and 31 are 86-100% white.

(b) Of 6 middle and junior high schools, 4 were 90% or more non-white; Southside Junior High School was 88.5% white and West Hertel was 72.5% white.

(c) Of the 7 academic high schools, 1 was 98.5% non-white and three were 89.8% and 77.3% white.

(d) Of the 6 vocational-technical high schools, four were over 87% white, the other two being 76.5% white and 69.9% white.

18. (a) On April 28, 1966, defendant Manch made a statement at a meeting of the Board of Education which included the following: "there is no such thing as equality of educational

opportunity in this city at this time--or in any large city that I know of--or in the state of New York." (Bd. Min. 7734, 4/28/66.) The Court is respectfully requested to take the entire statement into consideration.

(b) In a letter dated January 24, 1972, to a member of the defendant Board, defendant Nyquist declared that "segregation [in Buffalo] is more severe now than it was seven years ago," when defendant Nyquist's predecessor found the Buffalo schools racially segregated and ordered them integrated. The Court is respectfully requested to take the entire letter into consideration.

Staff Segregation

19. Non-white members of the Buffalo public school system staff accounted for a very small proportion of the total system staff.

(a) In 1972-73, there were only 430 non-white staff in the Buffalo school staff, which accounted for only 11.4% of that staff. For the period 1967-68 to 1972-73, the percentages were:

1967-68	1968-69	1969-70	1970-71	1971-72	1972-73
9.8	10.3	10.9	9.9	10.2	11.4

(b) In 1972-73, there were only 21 non-whites on the Central Office Staff, a decline of 3 from 1971-72; non-whites accounted for only 11.9% of that staff. For the period 1967-68 to 1972-73, the percentages were:

4.7	8.6	8.5	10.6	13.1	11.9

(c) Non-white administrators accounted for a very small proportion of the total administrative staff.

Although 26 schools were racially identifiable as non-white, there were only 17 non-white principals and assistant principals in 1972-73, or about 10% of the total principals and assistant principals in the system.

20. Non-white teachers and administrators were assigned to predominantly non-white schools.

(c) In 1970, for example:

(i) There were no black teachers in 15 elementary schools that were then 85% or more white.

(ii) All but two of the 11 elementary schools which had five or more non-white teachers were 96-100% non-white; of the other two, one was 86-100% non-white and the other was 51-85%.

(iii) Two of the four elementary schools with three or four non-white teachers were 51-85% non-white in pupil composition.

(iv) Over-all, almost two-thirds (63.3%) of the non-white elementary staff were assigned to 15 schools, which were all predominantly black.

(v) In 1971, of the six middle and junior high schools, two have a virtually 100% non-white student population, and these had a 25.9% and 10.9% non-white staff proportion, while the predominantly white schools had very few non-white staff.

(vi) Of the seven academic high schools, East High School was predominantly black. Thirty-nine percent of the total high school minority staff were assigned to East High School, and comprised 21.4% of the East High School faculty; at the other six senior high schools, the non-white ratio ranges from 3.7 to 12.9%.

(vii) Non-whites comprised 16.7% of the Fosdick-Masten Vocational High School staff, which was the only predominantly non-white vocational high school; the other five vocational schools had only 2.5% or fewer non-white faculty.

(viii) Three of the six special schools were 90% or more non-white in student population; 41.4% of the teachers in these three schools were minority, while only 5.6% of the teachers in the other three schools were.

(d) In 1973, there were:

(i) Thirty-four schools which were racially identifiable by student population as non white; there were only 18 non-white principals and assistant principals throughout the system which represented 19% of the total number of principals and assistant principals.

(ii) all but one of fourteen non-white principals in predominantly non-white schools.

(iii) No black teachers in 9 elementary schools that were 85% or more white.

(iv) All but two of the 14 elementary schools which had five or more non-white teachers were 98.9% or more non-white. Of the other two, one was 61.2% non-white and the other 73.2% non-white.

(v) Seven of the 12 schools with 3 or 4 non-white teachers were equal to or more than 51% non-white.

(vi) Over-all, 57.6% of all non-white elementary school teachers are in 14 schools, 12 of which are equal to or more than 98.9% non-white; the other two are 61.2% and 73.2% non-white.

(vii) In 1973-74, of the six middle and junior high schools, two are almost 100% non-white. The faculty average is 28.7% non-white, while the other four schools average 8% non-white.

(viii) Of the seven academic high schools, only East is predominantly non-white. Forty-seven and two-tenths percent of all minority teachers in the academic high schools are in East, and they comprise 32% of the East faculty. At the other six schools, the non-white ratio ranges from 2.1 to 9.7%.

(ix) Non-whites comprise 23% of the Fosdick-Masten Vocational High School staff, which is the only predominantly non-white vocational-technical school; the other five vocational-technical schools had only 1.6 to 6% non-white faculty; these latter schools average 2.9% non-white teachers.

(x) Three of the seven special schools are non-white in student population; 28% of the teachers in the three schools are non-white, while the average of non-white teachers at the other four schools is 3.1%.

21. (a) Until 1973, the teachers were permitted to transfer within schools in the Buffalo public school system solely on the basis of seniority and other conditions in the union contract.

(b) Prior to 1973, white teachers transferred from predominantly non-white schools to predominantly white schools.

22. (b) The Board ordered the staff to study ways of recruiting more non-white teachers.

(c) Prior to such meeting, efforts had been made by the Buffalo public school system to recruit black teachers from black colleges, but with very little success.

(i) None of the relevant teacher examinations was given at such recruitment sites.

(ii) The teaching applicant would therefore have had to pay his or her own way in order to merely take the examination.

(iii) The notice of the visit by the Buffalo school system representative consisted solely of a form notice.

(iv) The National Educational Testing examination is a procedure for testing teacher applicants.

(v) The National Educational Testing examination has been and is presently being used by the Buffalo Board.

(vii) Other school systems, and the Buffalo Board today, hold examinations where the teaching candidates are.

(d) In a memorandum dated March 5, 1973, Messrs. Clapp, Connors and Reville made six recommendations to increase the number of qualified minority staff members in our school system, including contacting minority groups on school campuses, advertising, using black newspapers or radio, and reassignment of staff.

(e) (i) No special efforts have been made to contact minority groups in particular, when visiting Western New York campuses.

(ii) No intensive advertising and recruitment program has been established in accordance with recommendation 2, nor have local or other civil rights organizations or the NEA been contacted.

(iii) No use has been made of black newspapers or radio stations, pursuant to recommendation 3.

(iv) There has been no reassignment of present staff, pursuant to recommendation 6, except insofar as transfers of white teachers from non-white schools have been subjected to the Reville directive of 1973.

Harm from Segregation

23. (d) Defendants Regents and Nyquist have frequently affirmed the importance of racial integration in the schools and the educational disadvantages on all students attending racially isolated schools. The Regents' policy has been affirmed many times in recent years.

(e) Studies by defendants Manch and the Buffalo Board have confirmed the educational benefits of racial integration.

UNLAWFUL ACTS BY BOARD OF EDUCATION WITH RESPECT TO SPECIFIC SCHOOLS

ACTS OF RACIAL SEGREGATION

Woodlawn Junior High School

24. (a) Woodlawn Junior High School ("Woodlawn") is located on a site bounded by Woodlawn, Michigan, Masten and Perry Streets in the City of Buffalo. It was opened for attendance in September, 1964.

(b) When it opened in 1964, its ethnic composition was approximately 99% non-white. This composition has persisted to date so that in 1973-74, all but two of its 767 students were non-white.

Stipulation of Facts.

25. (a) The site for Woodlawn was first proposed by the Board on July 21, 1958.

(b) The Woodlawn site was chosen by the Board on December 10, 1958.

(c) Such site choice was made over the opposition of some members of the black community of Buffalo who informed the Board that selecting such a site would make it difficult to avoid the school's becoming a segregated school; the optional area at School 17 was especially noted.

(d) Whereas some members of the Board (e.g., Chairman Rubino) at a Board meeting of December 10, 1971, refused to take this consideration into account, others (e.g., Mr. Rand) and Superintendent Manch noted that because the site was three blocks from Main Street, there was a possibility of having the school integrated, and all efforts to achieve that result would be made.

26. The pupil attendance zone for Woodlawn Junior High School was adopted on March 26, 1964, after many weeks of consideration.

(a) During the latter weeks of February, 1964, Board members and Dr. Manch presented some six different plans, as follows:

Mrs. Slominski and Mr. Economou advocated that school would draw its pupils from these elementary schools: School 8, East Utica and Masten; School 16, 939 Delaware; School 17, 1800 Main; School 30, 709 Elmwood; School 56, 716 W. Delavan; part of School 74, 126 Donaldson. The part of 74 involved in this and other proposals is the portion south of Northland Avenue. Pupils to the north now attend Fillmore Junior High School. This plan involves 1327 pupils and would make the school about 76% Negro.

(ii) Mr. Parlato said his preference was for a district consisting of Schools 8, 16, 17 and part of 74. This would mean a school almost entirely Negro.

(iii) President Paschal C. Rubino, Anthony J. Nitkowski, and School Supt. Manch favored the district consisting of Schools 56, 30, 16, 17, part of 74, and the portion of School 8 lying north of E. Utica Street. This would produce a school with 1053 pupils and a Negro enrollment estimated at 69-70%.

(iv) Dr. Manch proposed as his second choice a district including the part of School 8 north of Utica, part of 74, 16, 17, 30, 45, and 56. His compromise proposal would mean a school of 1292 pupils and be roughly 57% Negro.

(v) Dr. Lydia T. Wright said her first choice was a district consisting of the portion of School 8 north of Utica, Schools 16, 17, 30, 38 (350 Vermont), 45 (402 Auburn), 56 and part of 52. The part of 52 (176 Bird) involved here is bounded by Forest, Grant, Potomac, and Richmond.

(vi) She said she was willing to compromise for a district that would be the same as her first choice except that School 52 would be excluded altogether.

(b) (i) Schools 30, 56, 38, and 52 were largely non-white in 1963-64.

(ii) Some parents of students in Schools 30, 56, 45, 38, and 52 vigorously opposed any zoning plan that would include those schools within the Woodlawn attendance zone, and a petition to that effect signed by approximately 10,000 people was presented to the Board prior to March 26, 1964.

(c) At the March 26, 1964 meeting, Mr. Nitkowski offered the following additional alternative, which Dr. Lydia Wright supported: That Lafayette High School facility be established as a Junior High School; that Lafayette High School be established in the present new Woodlawn School, 9th through 12th grades, with emphasis on Science and Math subjects. Woodlawn being established as a high school would take in the entire Lafayette High School boundary, [illegible] the 9th grade would remain. Lafayette Junior High School boundary could include some schools east of Main Street.

27. (a) The Board adopted the following proposal:

[illegible] of elementary school districts No. [illegible] 16, and No. 17;

[illegible] portion of elementary school district No. 74 south of Northland Avenue; and

That portion of elementary school district No. 53 north of Glenwood Avenue.

For the purposes of this junior high school district, children shall be considered residents of elementary School No. 8 who reside in that portion of elementary school district No. 48 north of Best Street.

Also for the purposes of this junior high school district, children shall not be considered residents of elementary school district No. 17 who (a) reside in one of the two optional areas of district No. 17, and (b) who have duly elected to attend an elementary school other than No. 16 or 17.

All boundary streets are optional.

(b) The officially-stated designation of the school district for Woodlawn is as follows:

"1. Beginning at the intersection of North and Richmond, north on Richmond to Lexington, east on Lexington to Delaware, north on Delaware to West Delavan, east on West Delavan to Main, north on Main to Jefferson, south on Jefferson to Northland, east on Northland to Fillmore, south on Fillmore to old Scajaquada Creek, west on old Scajaquada Creek to Humboldt Parkway, south on Humboldt Parkway to Glenwood, west on Glenwood to Jefferson, south on Jefferson to Northampton, west on Northampton to Main, south on Main to North, west on North to Richmond, the starting point.
(See optional area (3) below.)

2. In addition to the above, 7, 8 and 9th. grade pupils residing in the following area will attend Woodlawn Junior High School: Beginning at Best and Main streets, north on Main to Northampton, east on Northampton to Jefferson, south on Jefferson to Best, west on Best to Main street, the starting point.

3. Pupils residing in the optional area of Woodlawn Junior High School (area bounded by Delaware, West Delavan, Main and West Ferry streets) will attend schools as follows:

Sixth grade pupils now attending No. 56 will remain at No. 56 for 7th and 8th. grades, and then attend Lafayette H.S., vocational or technical high schools for the 9th. grade.

Sixth grade pupils now attending No. 16 or No. 17 schools, will attend Woodlawn Junior H.S. for grades 7, 8 and 9.

New enrollees in this area, up to and including grade 6, may have the option of enrolling in No. 16, No. 17 or No. 56.

New enrollees in this area, grades 7 and 8, may have the option of enrolling in No. 56 or Woodlawn Junior H.S.

New enrolees in this area, grade 9, may have the option of enrolling in Woodlawn Junior H.S., Lafayette High School, or a vocational or technical high school.

4. All boundary streets are optional."

28. Parts of the attendance zones of Schools 30 and 56 are closer to Woodlawn than parts of attendance zones of schools designated as Woodlawn feeder schools.

(a) (i) All the feeder schools were virtually all black;

(ii) The optional areas included in the feeder pattern allowed white children residing in the geographical attendance zone to attend schools other than Woodlawn.

(b) (i) Census tract information for 1960 and 1970 shows that Schools 16, 30, and 56 are in predominantly white residential areas.

29. Some parents of children assigned to Woodlawn boycotted it for several days in September, 1964, because of its allegedly racially imbalanced attendance zone.

30. In subsequent years, Dr. Manch has referred to Woodlawn as "a segregated school by any definition" (Feb. 14, 1968), and has declared that: (i) the Board never intended Woodlawn to be integrated; (ii) it agreed Woodlawn would be a totally segregated school; and (iii) that the Woodlawn record makes it clear that "the Board is not going to accept any districting proposal that will mean an integrated school system." (Jan. 28, 1970)

31. (a) In order to attempt to integrate Woodlawn in 1968, the Board proposed in a report to Commissioner Allen, that Woodlawn be made a "magnet school" to attract students from other parts of the City. Some studies to that end were made. To date, however, this result has not been achieved.

32. Woodlawn is one of the two junior high or middle schools with a substantial percentage of non-white staff.

33. No effort has been made at any time to reduce the almost all-black composition of the Woodlawn student body by boundary changes of any kind.

Optional Areas

34. Up to June 30, 1972, certain schools in the Buffalo public school system had attendance zones with optional districts, wherein students residing in those optional districts were permitted to attend schools other than those that students residing in the rest of the district were required to attend.

35. Schools with such attendance zones and the optional schools available have included:

    (a) School 17. This school had two optional areas, as follows:

        (i) In one, students could attend schools 56-30 and 16, instead of 17.

(ii) In the second, students could attend schools 54 and 74 instead of 17.

(iii) Schools 56-30 and 54 were majority white for many years, and 56-30 remain heavily white.

(b) Schools 57-31-40.

(i) Students living in an optional district in 31, a black school, were able to go to school 41, a white school; the optional zone was in a census tract that was overwhelmingly white. This was abolished in 1965, with the students in the optional district assigned to school 57, then a predominantly white school.

(c) School 40. An optional district in 40, a largely white school, allowed black students in that district to go to school 75, a 99+% black school.

(d) Woodlawn Junior High School.

(i) An optional area was created in 1964 bounded by Delaware, West Delavan, Main and Ferry Streets as described in No. 27(b) above.

(ii) In addition, elementary school students exercising options and transfers out of feeder schools 16 and 17 were permitted to exercise the same privilege with respect to Woodlawn.

(e) Genesee-Humboldt Junior High School. This district contains 13 boundary streets, on each of which students may choose a majority white school instead of this almost all-black school..

(f) Students living on streets that form the boundary lines of two school districts may go to either [illegible]

36. In 1964, a report of the United States Commission on Civil Rights on racial segregation in the Buffalo schools pointed out the adverse impact of such optional areas on an integrated school system.

37. (b) The optional districts in schools districts a, b, e, and f were not changed until 1972.

38. During this period, some white children in the above-cited optional areas exercised their option and attended predominantly white schools instead of the school in which the optional district lay.

39. (a) In 1965, the 31-40 optional areas was abolished.
(b) In 1972, all of the other above-described elementary school optional districts were abolished.

40. The optional areas were maintained long after their adverse impace on racial integration was brought to the attention of the Buffalo defendants.

41. Maintenance of the optional areas has contributed to racial separation and isolation in the Buffalo public school system.

TRANSFERS OF WHITE CHILDREN FOR SEGREGATORY PURPOSES

42. Pursuant to the longstanding policy of the Board of Education, as enunciated September, 1956, all pupils in the

Buffalo public school system are required to attend the school in the district in which they legally reside. Any exception to this policy requires authorization from the office of Pupil Personnel Services. The exceptions to the policy are that a "transfer" (permission to attend school outside the district of residency) may only be granted for hardship, language, and voluntary integration.

43. That the policy of the Board which has existed for a number of years relative to where a student must attend school is set forth as follows:

> "All pupils are required to attend the school in the district in which they legally reside. Any exception to this policy requires authorization from the office of Pupil Personnel Services.
>
> Pupils who move from one school district to another are to be transferred to the school in the new district except where a request to continue in the school is approved for the remainder of the school year. he parents should be advised, however, that transfers near the end of the school year are not generally recommended. This is especially important in the case of pupils in grade eight, and twelve.
>
> Where the welfare of a pupil is concerned, the Bureau of Pupil Personnel Services may effect a transfer at any time."

> "All pupils are required to attend the elementary school in the district in which they legally reside. Any exception to this policy requires authorization from the office of Pupil Personnel Services.
>
> Pupils who move from one school district to another are to be transferred to the school in the new district except where a request to continue in the school is approved for the remainder of the school year. The parents should be advised, however, that transfers near the end of the school year are not generally recommended. This is especially important in the case of pupils in grades eight and twelve.
>
> Where the welfare of a pupil is concerned, the Bureau of Pupil Personnel Services may effect a transfer at any time.
>
> No requests for transfers to high school out of the district will be considered before the last two weeks in August. No requests for transfers to elementary schools out of the pupils district of residence can be considered until after registration reports are available following the opening of school [illegible]."

> "If a pupil from an academic high school, from Buffalo of from another recognized school system, is admitted to a vocational school, all credits which the pupil may have earned in general education subjects in the sending school are to be honored by the vocational high school in determining his standing toward graduation.
>
> Under the regulations of the State Department of Education a student may receive a vocational diploma from a Buffalo vocational high school by completing two, three or four years in vocational courses.
>
> Principals and guidance counselors should cooperate fully in connection with the transfer or admission of pupils, to the end that the best interests of the student are served by the vocational or the academic schools.
>
> Pupils transferring from vocational to academic high schools, after proper counselling and inter-school agreement, should be granted credit in full for all academic subjects completed in the vocational high school including related technical subjects. Satisfactory shop work may be applied toward graduation as industrial arts credit as recommended by the Supervisor of Industrial Arts.
>
> Each case should be decided upon its merits. A regular transfer must be effected in all cases. Until such official transfer is completed in writing, the student must remain a member of the vocational, technical or academic high school where he has been attending."

44. That a transfer means permission of a student to attend a school in a district other than in the district in which the student resides.

45. That the policy permits exception only where a hardship is involved, and, principally on the high school level, where a student makes a bona fide request to take a course which is not offered at the school in the district in which the student resides, or under the voluntary integration program.

46. That it has been the policy of the Board of Education to offer languages in each high school if there are a sufficient number of students who express a bona fide interest in taking such language.

Stipulation of Facts.

48. That in order for a transfer to be valid (other than those under the voluntary integration program), it required the approval of the office of Pupil Personnel Services.

49. That in addition to the number of transfers granted by the office of Pupil Personnel Services, prior to 1972, principals in a number of schools located in the area peripheral to schools identified as predominantly black by the Buffalo School System Ethnic Census granted a number of transfers without obtaining permission of the office of Pupil Personnel Services.

50. That on the average from the years 1965 through 1972 transfers were granted of approximately eight to ten white students per year from the School 54 district.

51. That as of March 10, 1972, there were 27 students in School 30 from School 16 district.

52. That as of March 10, 1972, there were fifteen students attending School 30 who resided in School 16 district.

53. That prior to on or about the end of the 1950's a course or courses in the Polish language were taught at East High School.

54. That on or about 1960, Polish was discontinued as an offering at East High School.

55. That subsequent to 1960, a number of white students residing in the East High School district have been permitted to transfer to other schools, particularly South Park High School and Kensington High School, for purposes of taking a foreign language including Polish and Russian and Italian.

56. That as of October 22, 1971, 214 students residing in the East High School district were attending school at South Park. Of these 176 students were registered in the Polish program, 173 white and three black; 38 students were registered in the Russian program, 24 white and 14 black.

57. That as of April 12, 1972, there were for the school year 1971-72, 30-35 students taking a foreign language at Kensington High School who were residents of the East High School district.

58. That on July 6, 1972, the Board of Education determined to offer Polish, Russian and Italian at East High School, and refused to grant transfers for such languages out of the East High School district to South Park High School or any other school.

59. That on May 22, 1974, the Board rescinded the July 6, 1972 resolution and discontinued offering Polish at East High School and determined to grant transfers to other schools, including South Park, out of the East High School district for the purpose of taking Polish.

60. That the practices in administering transfers by both the Office of Pupil Personnel Services and principals of various schools, and the language transfers, have resulted in from 2,000 - 4,000 white students annually attending schools outside of their districts thereby contributing to the higher

percentage of black students in various schools, including Schools 54, 16, Fillmore Middle, Genesee-Humboldt, Woodlawn, East High School, all of which have black student populations of at least sixty percent at the present time.

61. (b) Some principals of some schools have accepted students from outside their districts without obtaining approval of the Board's office of Pupil Personnel Services.

(d) The office of Pupil Personnel Services permitted black and white students to transfer out of their districts for the purpose of taking a foreign language.

62. These practices contributed to the racial isolation of the schools.

63. A white student who transfers out of his district elementary school attends the middle or junior school fed by his elementary school, so that he attends two schools outside of his district (elementary and middle or junior).

64. These transfers thereby affect the racial balance of two schools in the instance of many students.

Boundary Changes: 54-22

65. (a) School 54 is located on Main Street near Oakwood. School 22 is located on Huntington Avenue near [illegible] Avenue, which is northeast of School 54.

(b) In [illegible] the boundary for School 54 was shifted north to include Morris Avenue, which was previously part of School 22's district.

(c) Any K-6 student living on Morris Avenue was to attend only School 54.

(d) 1970 census tracts indicate that the Morris Avenue area is only 2.7% black, while the rest of School 54's district is between 14.9% and 24.3% black.

(e) In 1972-73, School 54 was 66.2% non-white, and School 22 was 22.1% non-white.

(f) (i) The School 22 street analysis chart for November [illegible], 1973 indicates that there were 35 students attending School 22 who did not reside in that district.

(ii) Of the 35, 21 were from the School 54 district and 20 resided on Morris Avenue.

Student Assignment: Schools 4 and 34

66. (a) School 34 is an annex to School 4. They are in the same general pupil attendance zone, are a few blocks apart, are administered by the same principal, and until 1970-72, both were K-6; in 1971-72, a 7th grade was added to School 4 and in 1970-71, the 6th grade was dropped from School 34.

(b) School 34 was built in 1863 and is the oldest elementary school in the City. It is purportedly used flexibly, according to the needs of the area.

67. Although no more than a few blocks apart, 4 and 34 are in different ethnic neighborhoods: 4 is in a non-white neighborhood, and 34 is in a white neighborhood.

68. Despite the proximity, 34 has always been more than 86% white, and 4 has moved from 38.5% white to 26.8% white. School 34 has increased in size somewhat, despite the removal of a 6th grade [illegible] School 4 has declined substantially, despite the addition of a 7th grade.

69. (a) School 4 is over 450 students below capacity and could easily absorb the 280 students in School 34. The other elementary school near 34, School 33, is also below capacity and, in any event, does not serve pupils in the same area as 34 and 4; School 33 is over 90% white.

70. The Buffalo Board has thus operated two unbalanced schools in the same school attendance district.

Student Assignment: School 50

71. (a) Four schools have special classes for educable mentally retarded ("EMR") students of junior high school age: 42, 44, 50, and 82. Of these, 50 is the only one solely for EMR students.

(b) Schools 24, 35, and 84 and the Child Care Center are also special schools for the handicapped.

(c) In all, 51 schools have classes for the mentally retarded.

72. Prior to its closing, School 50 was 100% black. It was built in 1893 and is in poor condition.

74. In 1973, the United States Department of Health, Education and Welfare advised the Buffalo Board that it would deny the Board approximately $1.3 million in federal funds because it found School 50 to be a segregated school, and ordered it integrated or closed.

75. (a) In response to this threat, School 50 was ordered closed in June, 1974.

(b) The students in School 50 have been reassigned to School 24, which was empty. That school is thus a racially imbalanced school.

76. St. Augustine has a school for pregnant girls. It is 100% non-white.

Boundary Change: 9-62

77. In 1964, School 9 was 100% white, and School 62 was 26% black. In 1965, the common boundary of Schools 62 and 9 was moved three blocks west, thereby adding to the School 9 attendance area.

78. The boundary shift resulted in the move of 106 students to School 9, all but four or five of them white.

79. In 1964-65, the area around School 62 was becoming increasingly non-white; thus, in 1966, School 19, the school next closest to School 62, was 86.3% non-white, having been only 21-30% non-white in 1961-62.

80. In 1972-73, School 9 remained 80.5% white, dropping to 71.5% in 1973-74; in 1972-73, School 62 was 78.6% non-white and in 1973-74, the non-white percentage rose to 91.5%, as enrollment dropped sharply from 861 to 770.

81. (a) The effect of the boundary change kept some white students out of School 62, which was becoming increasingly non-white.

Grade Structure and Feeder Patterns for Junior High Schools and High Schools

82. Of the four junior high schools operating in 1973-74, three are Woodlawn, Genesee-Humboldt, and Clinton, almost 90% or more non-white; the fourth (Southside) is only 11.5% non-white, a decline from 20.7% in 1969, and 15.6% in 1972.

83. (a) The four junior high schools cover grades 7-9, and thus are fed by K-6 schools.

(b) The overwhelming number of the 22 66% or more non-white elementary schools in the City are K-6:

(i) 14 are K-6; 5 are K-5; and 1 (school 93) is K-3.

(ii) Only 2 are K-8, and one of these (school 4) was K-6 until 1971-72.

84. (a) The high schools in Buffalo are fed primarily by K-8 schools.

(b) All but one of the high schools is predominantly white.

(c) All but 7 of the 31 elementary schools that were 86% or more white are K-8.

85. As a result, the non-white K-6 schools send their students to the predominantly non-white junior high schools.

86. (a) The predominantly white junior high school is fed by schools 4, 26, 28, 33, 31, 40, 34, 27, 70. All but 4, 31, and 40 are 86% or more white (40 is 72% white), and these are all K-6 schools.

(b) Of the 25 other schools that were 86% white in 1973, 17 were K-8 and the remaining 7 that were K-6, K-5, or K-4 were remote from any predominantly black school and close to K-8 predominantly white schools. E.g., 30 and 56; 86 and 88 were 81; 18 was near 77.

87. In sum, non-white students are fed to junior high schools and white students--except for the few in the Southside Junior High School area--are fed to either white high schools or adjacent elementary schools.

88. (a) The Buffalo junior high school system was established in the following years:

Genesee-Humboldt:	1961
Fillmore:	1962
Clinton:	1963
Woodlawn:	1964
Southside:	1966

School 39

89. (a) As part of the Sixteen Point proposal made to the Commissioner of Education in 1968, the Board declared it would not construct any more schools in non-white residential areas.

(b) A new building was constructed in 1968 which served as an addition to School 39.

(c) It was sited in all-black residential area, over objections by Board member George Blackman to siting School 39 at that location because that would perpetuate School 39 as a segregated school (5/[illegible]/67)

(d) The Buffalo defendants knew its student population would be virtually all-black.

(e) The Buffalo defendants did nothing to try to integrate school 39.

Southside Junior High School

90A. In 1971, Southside Junior High School was overcrowded. There were various ways to reduce such overcrowding, one of which involved (i) holding back 110 predominantly black students previously attending Southside Junior High School from the schools 4-34 area to school 4, a predominantly non-white school; and (ii) transfer of 50 school 40 students to school 44.

90B. (a) Schools 57 and 75 had excess capacity in 1970-71; School 75 had an enrollment of 546 with a capacity of 762, and school 57 had an enrollment of 331, with a capacity of 381.

(b) School 40 is nearer to schools 57 and 75 than to school 44.

(c) Schools 40 and 44 were 79 and 73% white in 1970-71; schools 57 and 75 were 49.9 and 100% non-white in 1970-71.

90C. The plan described in ¶90A was adopted, despite an awareness that the plan would increase the racial isolation of Southside Junior High School.

90D. Although originally intended to be temporary, the above-described plan has been continued in effect to date.

Bishop Ryan High School

91. In late 1970 or early 1971, the premises of Bishop Ryan High School became vacant.

92. It was taken under consideration by the Board that this school building be used to aid overcrowding at Southside.

93. At a Board meeting of June 9, 1971, Board member Nitkowski stated: "Yes, but you won't face, I don't know, you don't want to believe anybody but you're not going to get Bishop Ryan High School for the Buffalo Public Schools. The community is against it. They will not have an integrated school in that area. And they're not going to give it to you so you might as well forget it because you're going to have problems there. It's right next door to 69."

94. Bishop Ryan High School was not obtained for use by the Buffalo public schools.

Vocational High Schools

95. There are currently six vocational and technical high schools in the City of Buffalo. They serve the entire City and do not have special attendance areas. The City defendants have always prided themselves on the high quality of these schools, in contrast to other cities where vocational schools are frequently considered inferior in quality to academic schools.

96. Of the six, three have had very few non-white students (Seneca, McKinley, Hutchinson-Central Technical); two are 40-45% non-white (Burgard and Emerson); and one is almost all-

[illegible]

98. (a) In 1972, the examination and interviews were either dropped or modified by defendants to improve the racial balance at these schools.

(b) Such changes have not significantly improved the racial isolation in the Buffalo vocational schools. Thus, in 1973-74, all three were approximately 80% white, even though white students account for only 60.2% of the total high school population.

99. A majority of students attending vocational high schools travel by bus to their school.

BOARD INACTION

101. (a) On February 15, 1965, in The Matter of Yerby Dixon (___ Ed. ___), defendant Nyquist's predecessor, James E. Allen, ordered defendants Board and Manch to submit "a plan for the progressive elimination of racial imbalance, including the steps to be taken in this direction in 1965-66."

(b) The Board submitted proposals between 1965 and 1968 which were repeatedly found by Dr. Allen to be inadequate and "disappointing."

(c) The Board explicitly refused to adopt any plan that would "involve transportation of white children into non-white residential areas except by their own choice."

102. (a) In 1968, the Board proposed another plan to the Commissioner in which it declared that:

(i) It would convert Southside Junior High School into a middle school (grades 5-8).

(ii) The Board's staff would "be directed to develop a plan for the use of . . .

[Woodlawn Junior High School] without maintaining its presently segregated character."

(iii) The Board would provide "a plan either to integrate East [High School] or to distribute its pupils among the other secondary schools will be developed when space makes this possible."

(iv) From 1968 to 1973 each of the following high schools had capacity for at least 300 additional students on the average: South Park, Lafayette, Grover Cleveland and Bennett.

(v) Other middle schools would be built.

(vi) Educational parks would be planned.

(b) The most significant part of this plan was the projected establishment of approximately twelve integrated middle schools, which would educate grades 5-8.

(c) In 1968, the Board also promised to make an effort to make Woodlawn into a "magnet school" to draw students from outside the Woodlawn attendance zone.

103. (a) None of this has been done:

(i) Southside Junior High School has not been converted into a middle school; instead, the Board has acted to reduce the number of black pupils attending Southside Junior High School from approximately 20.7% in 1969-70 to 11.5% in 1973-74.

(ii) Nothing has been done to integrate Woodlawn Junior High School.

(iii) The Board has not acted to create or implement a plan either to integrate East High School or to distribute its pupils among the other secondary schools.

(iv) No other middle schools have been built.

(v) No educational parks have been approved by the Board.

(b) Woodlawn has not been made into a magnet school.

(c) Changing Fillmore from a junior high school into a middle school has not significantly reduced racial isolation and segregation.

104. (a) In 1967, defendant Manch appointed an Advisory Council on Integration, which was asked to propose ways to integrate the Buffalo public schools.

(b) The Advisory Council made twenty-eight recommendations, many of which were supported by the then-Coordinator for Integration Donald Laing.

(c) Only one such recommendation was adopted.

105. (a) Even though the Common Council has not funded middle schools other than the West Hertel school, the Buffalo Board has not adopted an alternative approach to ending racial isolation.

(b) The Board has not undertaken use of underutilized buildings for middle schools, as suggested by Board member Arnold Gardner.

(c) Alternatives such as pairing schools have not been adopted.

106. Defendants have never made an attendance area change that involved assigning students from a majority white residential area to a majority black school, even though some white schools have a student population in excess of capacity, while some black schools have a population of less than capacity.

107. On March 23, 1972, the Board voted to send a letter to Commissioner Nyquist relating to his directive; some Board members explicitly referred to the Commissioner as an "adversary."

108. On March 26, 1972, the Board received a proposal for integration prepared by the Coordinator for Integration James Heck and "filed" it, thereby tabling it. No action thereon has been taken.

COMMON COUNCIL ACTION AND INACTION

110. (a) Funding of educational activities and programs in the City of Buffalo requires approval by the Common Council of the City of Buffalo ("Common Council") which approves the budget of the Board of Education and determines what elements thereof are to be funded.

(b) Funding for the construction of schools in the City of Buffalo requires approval by the Common Council of the City of Buffalo.

(c) The Common Council is the legislative organ of the City of Buffalo and is vested with the authority and responsibility for enacting legislation within its jurisdiction for the City of Buffalo.

Portable Classrooms

112. (a) On May 8, 1968, the Buffalo Board of Education approved the creation of 24 portable classrooms to be constructed at 12 predominantly white schools in order to provide spaces for some 450 non-white students from Clinton and possibly Woodlawn Junior High Schools and to improve integration; Board members Parlato and Joseph E. Murphy dissented. The action was taken at a public meeting in which a large number of people attended and strongly opposed the Board's action.

(b) Such portable classrooms are widely used throughout school systems in the United States

113. (a) Within a few days, on May 14, 1968, former Board member Alfreda Slominski proposed and the Council adopted a resolution directing the Corporation Counsel "to prepare the necessary legislation" to prohibit the use of portable classrooms, even though said Corporation Counsel advised the Common Council that in his opinion, it had no power to enact such legislation.

(b) Two other resolutions declaring opposition to the portable classrooms were also adopted.

(c) Councilman Edward V. Regan and others noted in debate that the underlying issue was racial integration of the schools.

(d) Boycott threats were made by persons opposed to the use of the portable classrooms. Councilmen Slominski, William A. Buyers, and Gerald J. Whalen joined in a picket line around City Hall on May 22, 1968, protesting the use of portable classrooms.

114. (a) On June 11, 1968, the Common Council amended the Building Code as follows:

> "The first paragraph of Section 201 of Chapter XII of the Ordinances of the City of Buffalo . . . shall be amended to read as follows:
>
> §201. Schools, special restrictions and alternate requirements. Notwithstanding any other provisions of this chapter regulating the classification, design, construction or location of buildings or structures, when there presently exists on any site a building or buildings used and occupied for school classrooms or other school purposes, no additional buildings or structures shall be erected or placed on said site unless the additional building or structure is of the same type of construction as the main building located thereon.
>
> Subject to the foregoing limitation, it shall be lawful to erect in this city schools and colleges, including the auditoriums and gymnasiums connected therewith, designed, constructed and used in the manner set forth herein, any other provisions of this chapter to the contrary notwithstanding. This section shall only apply to such buildings or structures which do not exceed two stories in height; and this section may only take precedence over other applicable provisions of this chapter when, in the judgment of the director of buildings and subject to his approval, the requirements and provisions of this section will provide a safe, satisfactory and adequate building for the intended use.
>
> (Note: Matter underlined is new.)"

115. On June 12, 1968, the Board of Education voted to proceed with requesting a building permit for constructing the portable classrooms.

116. On June 24, 1968, Mayor Frank A. Sedita vetoed the ordinance amendment, relying on an opinion of the Corporation Counsel, which stated:

> "(a) The prohibitions contained in the ordinance constitute an attempt to create and establish policies pertaining to education which rightfully and legally belong to the Board of Education and other institutions of learning. Such prohibitions will not only interfere with the operation of the school system of this state within the boundaries of the city, but will also add to the differences in opinion now existing as to the propriety of constructing and using portable or relocatable classrooms for educational purposes.
>
> (b) The said ordinance is discriminatory in purpose, nature, and object in that it is designed and intended, primarily to hinder the Board of Education in maintaining and operating a function and facility of the city school system. This design and intent is a matter of public knowledge."

117. (a) On July 9, 1968, the veto was overridden by an 11-4 vote.

(b) On the same day, the Council defeated a bill to direct the Corporation Counsel to prepare a bill banning discrimination in all types of housing.

(c) In September, 1973, the Council defeated similar efforts by Councilman Horace Johnson to enact fair housing legislation.

118. The Board of Education challenged the constitutionality of the ordinance and by order and opinion dated September 9, 1968, the Supreme Court, Erie County, held the ordinance unconstitutional, which decision was affirmed the following year. *Board of Ed., City of Buffalo v. City of Buffalo*, 32 A.D.2d 98 (4th Dept. May 16, 1969).

119. The Building Code Amendment of June 11, 1968 thus delayed implementation and use of the portable classrooms for at least a year.

Middle Schools

120. (a) The middle school (5-8) program was the central and crucial element of the Board's efforts at integration.

(b) In 1968, the Board proposed the creation of 12 middle schools which would all be integrated; no integration was planned for the elementary (1-4) schools.

121. (a) In 1967, the Board decided to make the West Hertel school, then under construction, into an integrated middle school in the Riverside area at Military Road and Hertel Avenue.

(b) Community opposition in the Riverside area was high; Board member Slominski was quoted at length in opposition to the school in a Riverside newspaper.

122. (a) By July 25, 1968, the West Hertel school was approximately half to three-quarters completed On that date, the Common Council refused to authorize the borrowing of $997,000 to complete the school, while approving other school construction bond issues.

(c) Superintendent Manch declared, "The issue is integration just as it was on the portable classrooms," and the issue was so seen by many others in the community, including the Buffalo Evening News.

123. The Council approved funding for completion of the West Hertel Middle School.

124. At the meeting of July 25, 1968, the Council refused to authorize a bond issue of $380,000 for planning the remaining middle schools; the integration purposes of the bond issues were clearly set out.

125. On June 3, 1969, the Council tabled a proposal for $190,000 in planning funds for middle schools.

127. In November, 1972, only one middle school was recommended by the Board staff, and that proposal has not been acted upon in any way.

Busing

128. In recent years, the Common Council has adopted resolutions opposing cross-busing for purposes of integration, see, e.g., Resolutions No. 161, 162 (3/7/72), and rejected proposals against discrimination in housing. Such is reported in Proceedings of the Common Council, No. 174 (7.10/68).

Bishop Ryan

129. (a) In 1971, the Board considered purchasing Bishop Ryan High School in order to reduce overcrowding at South Park High School and Southside Junior High School.

(b) If purchased, Bishop Ryan could have contributed to reducing racial isolation and improved integration.

BOARD MEMBERSHIP

130. (a) In January, 1972, the Board was considering a request by defendant Nyquist to propose further plans to reduce racial isolation in the Buffalo public schools.

(b) Mayor Frank A. Sedita appointed Mrs. Carol Williams to the Board of Education. In support of the appointment, the Mayor declared in a letter to Councilwoman Slominski that Mrs. Williams' appointment would break the deadlock. He added:

> "I have made my decision. It affirms my position against cross-bussing. . . .
>
> Mrs. Williams had made it clear that she shares my belief with respect to the bussing issue."

131. (a) Mrs. Williams has voted in a manner consistent with the above expectations, after declaring at her first meeting: "I am against busing in any shape or form." (March 8, 1972.)

(b) On March 28, 1972, Mrs. Williams joined with three other members of the Board to table the integration plan described in ¶108.

STATE ACTION AND INACTION

132. (a) Defendants Board of Regents of the State of New York ("Regents") establish the policies and practices for the administration of the public school systems of the State of New York. Pursuant to N. Y. Educ. L. §207, they "exercise legislative functions concerning the educational system of the system, and, except as to the judicial functions of the commissioner of education, establish rules for carrying into effect the laws and policies of the state, relating to education."

(b) The Commissioner of Education is the chief executive officer of the state system of education and of the Board of Regents, pursuant to N. Y. Educ. L. §305. He has the responsibility for enforcing all laws relating to education and for executing all educational policies adopted by the Board of Regents. He has general supervision over all elementary and secondary schools, including those in the public school system of Buffalo.

(c) Section 306 of the N. Y. Education Law gives the Commissioner the power to remove any school officer or member of a board of education who willfully disobeys any decision or order of the Commissioner of Education and to withhold from any district or city its share of the public money of the state for such disobedience.

Failure to Enforce Regents' Policy

133. (a) The Regents have frequently declared their policy to eliminate racial isolation and segregation in the New York State schools.

(b) The Regents have also acknowledged and declared the educational indispensability of racial integration, including its statement thereon in a "Statement on Racial Integration" of March 4, 1972 (p. 2).

134. On February 15, 1965, in The Matter of Yerby Dixon (___ Ed. ___), defendant Nyquist's predecessor, James E. Allen, ordered defendants Board and Manch to submit "a plan for the progressive elimination of racial imbalance, including the steps to be taken in this direction in 1965-66."

135. From 1965 to date, the Commissioner has frequently noted the failure of the Buffalo Board to comply with his order, as set forth in ¶134 above, and has noted the repeated "rebuffs" to him on this matter by the Buffalo Board.

136. (a) On January 24, 1972, the Commissioner informed the Board that "segregation is more severe in Buffalo now than it was seven years ago."

(b) In November, 1972, the Commissioner reiterated his findings that the Buffalo Board had failed to comply with his decision and order, and with the policies of the Board of Regents.

137. The Commissioner is aware that the Buffalo Board will continue to do nothing to enforce the order of February 15, 1965 through June 30, 1974, when an elected board took office. The Commissioner has no evidence that the newly-elected Board has complied or is planning to comply with the order.

138. The Commissioner has taken no steps since February 15, 1965, to remove any member of the Buffalo Board or any of its employees or to withhold funds; nor has he taken any steps to seek a court order compelling compliance with his order of February 15, 1965, although the Commissioner declared in a letter of January 24, 1972 (referenced in ¶18(b) of this stipulation) that "segregation in [Buffalo] is more severe now than it was seven years ago."

Siting and Construction

141. Defendants Commissioner and Regents have approved the siting and construction of schools including Woodlawn and 39 which they knew would create, maintain, and perpetuate racial isolation and segregation.

142. The Commissioner has not promulgated a formal regulation to effectuate the Regents' policies to desegregate the schools.

Ch. 342, L. 1969

143. In 1969, the New York State Legislature enacted Chapter 342 of the Laws of New York, amending §3201 of the State Education Law. Chapter 342 prohibited state education officials and appointed boards from assigning students, or establishing, re-organizing, or maintaining school districts, school zones or attendance units, for the purpose of achieving racial balance in the schools.

144. Chapter 342 was held unconstitutional by a three-judge court in Lee v. Nyquist, 318 F. Supp. 710 (1970), aff'd, 402 U.S. 935 (1971), on the ground that is involved the State in racial discrimination and impermissible racial classifications.

Closing of Technical High School, Fosdick-Masten, and Hutchinson Central

146. In 1953 the defendant Board caused Technical High School to be closed on Clinton Street.

147. Technical was a predominantly white school located in a predominantly black neighborhood.

148. In 1953, the defendant Board caused Hutchinson-Central and Fosdick-Masten High Schools to be closed as academic high schools.

150. The actual consequences of these changes are the following:

(a) Closing of the only high school in the black districts of Masten and Ellicott.

(b) Opening a girls' vocational school at Fosdick-Masten--a practically all-black school in a practically all-black neighborhood.

(c) Close a predominantly white school (Technical) located in a practically all-black neighborhood.

(d) Causing the large number of black students to go from Hutchinson Central to East High School.

151. At a Board meeting of May 26, 1954, the Board authorized changes in the East High School district so that students living in an optional area to the northeast no longer went to East. Such students were practically all white.

152. At the same time, the Board extended the East district further south. This resulted in some students who were black being required to go to East instead of predominantly white South Park.

153. At a Board meeting of May 22, 1957, further changes in the districts affecting East High School were made, including: the area bounded by East Ferry, Michigan, Virginia and Jefferson Avenues, formerly optional to Grover, Bennett or Lafayette, was included in the East district. Most of the students in this area are black.

154. At a Board meeting of May 22, 1957, high school students from elementary district 43 were assigned to go to South Park High School as of September, 1957.

155. Students from the school 43 district were predominantly white.

156. School 43 district is either closer to East High School--or at least equidistant to--than South Park.

157. Following the transfer of Technical [illegible] School to Hutchinson Technical, the Board set up a 7th and 8th grade center at the site of old Technical High School resulting in an all-black Clinton Junior High School, feeder schools of which were 6, 12, 32, and 75, all black elementary schools.

158. The closing of Hutchinson Central was protested by certain persons, including Councilman Leland Jones, at the Board's meetings of May 13 and 20, 1953, and June 24, 1953.

159. At these two meetings, the then-Chairman of the Board Pascal Rubino pointed out that economics did not justify the actions proposed.

160. On at least one occasion within recent years defendant Manch has acknowledged at a Board meeting that the closing of Hutchinson Central contributed to causing East to become a black school.

161. The closing of Hutchinson Technical and the distribution of students and changes in districts affecting East in 1954 and 1957 has contributed to East's becoming a black school.

9/19/74

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Pretrial Statement Relating to Housing and Documents

162. Preliminary Statement:

The following is offered by way of explanation of the plaintiffs' [illegible] of [illegible] this area and does not call for a stipulation except plaintiffs request that the defendants stipulate to the authenticity of the exhibits referred to herein.

The plaintiffs will establish that blacks are located principally in the Masten and Ellicott Districts by virtue of City, State and Federal action over the years, which action has been and is in conformity with white citizen pressure--and not by accident or choice of residence.

Also, private discrimination, supported and condoned by City, State and Federal action, has influenced government decisions at all levels. Such decisions have effected containment of the black population and prohibited free movement over the years.

163. Witnesses:

164. The plaintiffs will call MR. VICTOR EINACH, presently retired from the New York State Division on Human Rights. He was an inspector for the Buffalo Municipal Housing Authority in the late 1930's. Mr. Einach will testify that in the late 1930's the black population of Buffalo approximated 20,000. During this period the Buffalo Municipal Housing Authority, established in 1934, caused the Willert Park Project to be constructed through the aid of U. S. Government funds. Willert Park, located on Jefferson Avenue near William in Buffalo's Ellicott District, had approximately 17[illegible] units. At this time the surrounding community was not a 100% black neighborhood. However, this is the

only housing project where Negroes were permitted to reside, although the Lakeview Project, having 668 units, constructed on Buffalo's west side, and the Commodore Perry Project in Buffalo's first ward were built during the same period. A few years later the Kenfield Project in the Kensington area with 658 units was constructed.

Mr. Einach will explain that as the Negro population grew it was necessary to provide more public housing, and proposals were made in the early 1940's to locate such housing in South Buffalo, Cheektowaga, on the west side, Fillmore Avenue, and the blacks moving into existing housing projects such as Lakeview or Commodore Perry was discussed.

There will be introduced through Mr. Einach various newspaper clippings, itemized more particularly in the list below, which demonstrate the opposition of citizens in the various parts of the area including leading persons, those in authority, institutions, churches and others. Mr. Einach will identify a June 20, 1946 report of the Subcommittee on Housing, discrimination in public housing in Buffalo published by the State Commission Against Discrimination and the results of his report concerning this report; he will identify an exhibit "Race, Fear and Housing" published by the Urban League in 1946.

This evidence will establish that the City and Municipal Housing and Federal officials yielded to this pressure and refused to construct additional housing to be available for black persons in any area except Willert Park and except the so-called Negro section, and it was decided to add some 300 units to the Willert Park project. Thereafter, continuing the same policies and yielding to the same pressures, further public housing was built but only in the same so-called Negro area, namely, the Carver Project (now Ellicott Mall) and the Talbert Project.

Mr. Einach will also testify that following the submission of the report of discrimination in public housing, that at a meeting in [illegible] of the Buffalo Municipal Housing Authority it refused to pass a resolution permitting the assignment of blacks to other than Willert Park and also refused to permit any transfers of blacks from Willert Park to any of the other projects.

165. MR. MARTIN [illegible] of Washington, D. C., will testify as to the policies of the Federal Housing Administration, as expressed in the 1935, 1936 and 1938 F.H.A. Underwriting Manuals. Such policies expressly directed employees and developers of housing to discriminate against blacks. For example, among the relevant parts of these manuals which will be offered into evidence are the following: Section 310 dealing with "protection from adverse influences" provides in part, "Important among adverse influences besides those mentioned above are the following: infiltration of inharmonious racial or national groups. . . ."

The section dealing with "Appeal of the Neighborhood," particularly Section 315, provides in part, "The appeal of a residential neighborhood results from . . . the kind and social status of the inhabitants."

The section entitled "Protection from Adverse Influences" provides in Section 228 that deed restrictions are apt to prove more effective than a zoning ordinance in providing protection from adverse influences. Section 266 states, "The social class of the parents of children at the school in many instances have a vital bearing." Section 284(3) provides, "Recorded deed restrictions should strengthen and supplement zoning ordinances, and to be really effective should include the provisions listed below. . . ." Recommended restrictions include the following: "(g) prohibition of the occupancy of properties except by the race for which they are intended."

Section 951 dealing with quality and acceptability of schools provides in part, "When considering the question of schools . . . the social class of the parents of children at the school will in many instances have a direct bearing. . . . However, if the children of people living in such an area are compelled to attend school when a majority or considerable number of the pupils represent a far lower level of society or an incompatible racial element, the neighborhood under consideration will prove far less stable and desirable than if this condition. . . ."

Mr. Sloan will testify that these were the policies and practices under which the F.H.A. evaluated applications for federally guaranteed mortgage loan applications. Mr. Sloan will testify that these manual provisions were in effect until on or about 1948.

165. DR. MYRON McGUIRE, a Buffalo dentist, will testify that in the late 1930's when the decision was made by the Municipal Housing Authority that only blacks would be assigned to live in the Willert Park Project and that whites would not be assigned to reside there and Negroes would not be permitted to reside in the other projects, Dr. McGuire went to Washington to protest this and the decision to make Willert Park an exclusively black housing project.

166. MR. CLEON SERVICE, an experienced Buffalo realtor, will testify that following World War II when the housing boom started north of the city, he approached officials of major developers in the Niagara Falls Boulevard, Lincoln Park and other areas. He wanted to bring black clients and cooperate in the sale of homes to them. The developers flatly refused.

Stipulation of Facts.

Mr. Service will testify that with respect to the sale of homes to blacks in the Hamlin Park district, located generally to the southeast of Main and Kensington, after the war and into the 1950's, blacks could not see homes in that district. It was only after plans were laid for the construction of the Humboldt-Kensington Expressway that blacks were permitted to see homes in this area.

Mr. Service has been a member of the Greater Buffalo Board of Realtors since the late 1940's. At that time the manual of the National Association of Real Estate Boards prohibited the introduction of diversified groups into otherwise homogeneous neighborhoods. When Mr. Service wanted to break this line, he was told by brokers that this was contrary to the National Realtors Code.

Multiple listing was introduced in 1958, resulting in a furor among the members of the Greater Buffalo Board of Realtors because this system would make white homes available for sale and place them into the hands of black brokers. According to Mr. Service, this caused the Board to split with the suburban brokers, who formed their own suburban board. The multiple listing system was not available to blacks.

Mr. Service states that in 1958 at a meeting of the Board of Realtors in the Park Lane Restaurant at which all black brokers were invited to attend, the presiding officer and the Executive Director of the Board of Realtors put it straight to the black brokers: If black brokers were to show up in white areas with black customers, the multiple listing system would die. The black brokers felt intimidated by this and were forced to agree with the white brokers at this meeting that they would not show homes to blacks in white areas. This agreement included an understanding on the part of the black brokers that if they had a white customer, they would request a white broker to show the home and the black broker would receive a full commission. The blacks agreed to this because they felt that in time multiple listing would be beneficial to them. This agreement lasted until the Metcalf-Baker Act was passed by the New York State legislature in the early 1960's. However, for a number of years the State Commission Against Discrimination was completely ineffective in enforcing the statutes or investigating complaints.

Mr. Service will also testify as to the impact of F.H.A. 235 housing; F.H.A. 236 housing; F.H.A. multi-family rental survey.

167. Plaintiffs will introduce the November, 1961, report of the Buffalo Municipal Housing Authority dealing with Ellicott relocation objectives, experience and appraisal. This report will show that the thousands of persons who were displaced by the Ellicott Urban Renewal project which destroyed hundreds and hundreds of residences in the 1950's were relocated in the Ellicott and Masten districts. This is demonstrated through the demographic maps attached to the report. The reasons for relocating displaced families in the so-called black areas (Ellicott and Masten districts) are set forth in Part 3 of the City of Buffalo's Model Cities application of 1967. At page 26 of Section 3, the explanation for this is given:

> Although at the time there was a sufficient number of adequate housing units available, the relocation program failed to take into account the residential exclusion problem which restricted the movement of non-whites to the Masten and Ellicott communities. This restriction, though unwritten and unstated, nevertheless reduced the supply of housing units available to the non-white families displaced by the Ellicott project to an unsatisfactory level. Thus, relocation of the Ellicott residents was accomplished by increasing the density of the remainder of the Ellicott community and the lower Masten area mainly by virtue of illegal conversions of single and two, multi-family structures and the doubling up of families in the existing units. The impaction of

> these two areas in turn led to the speeding up of the processes of blight formation in the remainder of the Ellicott and Masten areas.

An additional significant factor, confirmed in Part 3 of the Model Cities application, is that most of the families displaced by the Ellicott renewal required rental housing. As stated at page 27 of the application, almost 90% of the available rental housing in Buffalo was exempted from State-enforced legislation because such legislation did not include two-family owner-occupied residences. Therefore, the Buffalo Model Cities application represented to the U. S. Government in Section 4 of Part 3 on page 28 that its program toward achieving its goals would include the following: "(a) the provision of total-coverage fair housing legislation together with machinery for its vigorous enforcement" (emphasis supplied).

But all attempts to pass such promised legislation in the Common Council of Buffalo, from 1968 to the present, have been defeated by a strong majority vote of the Common Council.

168. MR. ANTHONY DUTTON, an officer of H.O.M.E. (Housing Opportunity Made Equal), will testify that since on or about 1946 through on or about 1970 the Municipal Housing Authority followed a policy of not permitting blacks to transfer from one housing project to another; that, through a number of meetings and other efforts, H.O.M.E. was successful in persuading the Municipal Housing Authority to change this policy. In addition, Mr. Dutton will testify to a number of other instances of both City discrimination in two-family homes, particularly owner-occupied, and discrimination in various suburbs, all of which contributed to the containment of blacks in principally the Ellicott and Masten districts.

Mr. Dutton will testify that in August, 1970, New York State Governor Nelson A. Rockefeller appointed a committee to review New York laws and procedures in the area of human rights. In the committee's report of March 27, 1968, it was recommended that legislation be passed to make it unlawful to discriminate in an owner-occupied two-family residence. However, the State refused to pass this legislation.

Plaintiffs will introduce pertinent evidence from the Technical Reports on Housing in the Erie-Niagara Region, studies made in 1970 and 1971 relating to minority housing problems.

169. A witness will be called to identify a number of subdivision plans and restrictions obtained from the Erie County Clerk's office. These pertain to subdivisions in suburban areas surrounding Buffalo and contain restrictions and covenants based upon race. They will be offered as further evidence of private and state action supporting the containment of Blacks.

170. Stipulation:

At trial, defendants will berequested to stipulate as to the authenticity of the following described exhibits:

Race Fear and Housing (published in 1946 by Urban League)

Article from Buffalo News dated June 4, 1938 titled "Lakeview Housing Wins Federal Approval"

Article from Buffalo News dated June 5, 1938 titled "Funds for Improving Negro District is Goal of Housing Authority"

Article from Buffalo News dated June 7, 1938, titled "Early Action Predicted on Housing Bids"

Article from Buffalo News dated June 8, 1938, titled "Contract for City Housing Job is Signed"

Article from Courier-Express dated June 14, 1938, titled "Housing Board SeeksOptions for Two Sites"

Article from Courier-Express dated June 12, 1938, titled "Model Housing Plan for State to be Drafted"

Stipulation of Facts.

Article from Courier-Express dated June 18, 1938, titled "Housing Parley Will Consider Negro Project"

Article from Courier-Express dated July 25, 1941, titled "200-Unit Negro Project Here Gets Approval"

Article from Courier-Express dated July 31, 1941, titled "Defense Housing Officials Told Area Needs 7,700 Units at Once"

Article from Courier-Express dated August 14, 1941, titled "Stop Plans for Negro Housing"

Article from Courier-Express dated August, 1941, titled "Negro Housing Site Protested by Civic and Business Groups"

Article from Courier-Express dated August 15, 1941, titled "Abandonment of Housing Site for Negroes Virtually Assured"

Article from Courier-Express dated February 22, 1942, titled "Council Given Blame for Housing Row"

Article from Courier-Express dated February 23, 1942, titled "Negroes OK Housing Site"

Article from Courier-Express dated March 3, 1942, titled "Mruk, Gluszak Ask Council to Repeat Stand on Housing"

Article from Courier-Express dated March 4, 1942, titled "Fillmore-Eagle Housing Work Suspended by Federal Order"

Article from Courier-Express dated March 4, 1942, titled "Housing Plan Abandonment by U.S. Likely"

Article from Courier-Express dated March 5, 1942, titled "Work Stopped on Fillmore Housing Plans"

Article from Courier-Express dated February 24, 1944, titled "2500 Home Units Still for Rent after U.S. Withdraws 2580"

Article from Buffalo News dated July 20, 1948, titled "M'Mahon Defends Dante Place Site for Public Housing"

Article from Buffalo News dated July 19, 1948, titled "Group Asks Review of Housing Proposal"

Article from Buffalo News dated August 14, 1948, titled "Housing Authority Plans Top Priority for Evicted Families"

Excerpts from F.H.A. Underwriting Manuals.

State Commission Against Discrimination, June 20, 1946, "Report of Sub-Committee on Housing: Discrimination in Public Housing in Buffalo"

Ellicott Relocation: Objectives, Experience,and Appraisal." November, 1961 Buffalo Municipal Housing Authority

M.H.A. Summary Annual Survey of Tenants, 1973

M.H.A. Annual Survey of Tenants, 1973 (Federally-Aided Developments)

M.H.A. Annual Survey of Tenants, 1973 (State-Aided Developments)

M.H.A. Summary Annual Survey of Tenants, 1972

M.H.A. Annual Survey of Tenants, 1972 (Federally-Aided Developments)

M.H.A. Annual Survey of Tenants, 1972 (State-Aided Developments)

M.H.A. Annual Survey of Tenants, 1971 (Federally-Aided Developments)

M.H.A. Annual Survey of Tenants, 1971 (State-Aided Developments)

M.H.A. Annual Survey of Tenants, 1970 (Federally-Aided Developments)

M.H.A. Summary of Moveouts, Admissions, Vacancies, 1970

M.H.A. Summary of Moveouts, Admissions, Vacancies, 1969

Common Council Proceedings of 5/28/68

Common Council Proceedings of 6/25/68

Common Council Proceedings of 7/2 and 7/9/68

Common Council Proceedings of 11/19/68

Common Council Proceedings of 12/3/68

Buffalo Evening News, 7/10/68

Buffalo Evening News, 7/10/68

Buffalo Area Map Sheet 10 with Census Tract Figures

1970 Census of Housing, Black Statistics, Buffalo, New York

March 1968 Report of Governor's Committee to Review New York Laws and Procedures in the Area of Human Rights

Technical Report on Housing in Erie-Niagara Region (June 1970)

Technical Report on Housing in Erie-Niagara Region (June 1971) Two Parts

H.O.M.E. File No. 1

H.O.M.E. File No. 2

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DATED: August 9, 1974
Amherst, New York

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

* *

GEORGE ARTHUR, NORMAN GOLDFARB, WILLIAM AND WILHELMINA P. SEALES, JOHN MEDIGE, and THE CITIZENS COUNCIL FOR HUMAN RELATIONS, INC. and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, BUFFALO BRANCH,

Plaintiffs,

CIVIL DOCKET
NO. 1972-325

-v-

EWALD P. NYQUIST, COMMISSIONER OF EDUCATION, THE BOARD OF REGENTS OF THE STATE OF NEW YORK, JOSEPH MANCH, SUPERINTENDENT OF SCHOOLS OF THE CITY OF BUFFALO, THE BOARD OF EDUCATION OF THE CITY OF BUFFALO, STANLEY M. MAKOWSKI, MAYOR OF THE CITY OF BUFFALO, and DELMAR L. MITCHELL, RAYMOND LEWANDOWSKI, GUS FRANCZYK, ALFREDA W. SLOMINSKI, WILLIAM J. DAURIA, JOSEPH S. FORMA, MICHAEL McCARTHY, WILLIAM B. HOYT, GEORGE K. ARTHUR, RICHARD F. OKONIEWSKI, HORACE C. JOHNSON, JOHN A. RAMUNNO, ANTHONY M. MASIELLO, DANIEL J. HIGGINS and WILLIAM A. PRICE, constituting the members of the COMMON COUNCIL OF THE CITY OF BUFFALO,

Defendants.

* *

Proceedings of trial held before the Hon. John T. Curtin, United States District Judge, commencing on October 1, 1974.

APPEARANCES:

HERMAN SCHWARTZ, Esq., and RICHARD F. GRIFFIN, Esq., Attorneys for Plaintiffs.

LOUIS J. LEFKOWITZ, Attorney General of the State of New York, Attorney for Defendants EWALD P. NYQUIST, COMMISSIONER OF EDUCATION, THE BOARD OF REGENTS OF THE STATE OF NEW YORK; MRS. JEAN M. COON, Assistant Attorney General, and EUGENE A. PANFIL, Assistant Attorney General, of Counsel.

ANTHONY MANGUSO, Corporation Counsel of the City of Buffalo, Attorney for Defendants JOSEPH MANCH, SUPERINTENDENT OF SCHOOLS OF THE CITY OF BUFFALO, THE BOARD OF EDUCATION OF THE CITY OF BUFFALO, STANLEY M. MAKOWSKI, MAYOR OF THE CITY OF BUFFALO, and DELMAR L. MITCHELL, RAYMOND LEWANDOWSKI, GUS FRANCZYK, ALFREDA W. SLOMINSKI, WILLIAM J. DAURIA, JOSEPH S. FORMA, MICHAEL McCARTHY, WILLIAM B. HOYT, GEORGE K. ARTHUR, RICHARD F. OKONIEWSKI, HORACE C. JOHNSON, JOHN A. RAMUNNO, ANTHONY M. MASIELLO, DANIEL J. HIGGINS and WILLIAM A. PRICE, constituting the members of the COMMON COUNCIL OF THE CITY OF BUFFALO; ANTHONY GREGORY, Assistant Corporation Counsel and FRANK A. SEDITA, JR., Assistant Corporation Counsel, of Counsel.

* * *

New York State because it has more children at segregated schools. Since 1964 the situation has become progressively worse and these are some of the facts which the evidence will show.

In 1965 there were twenty-one schools with over fifty per cent black and fourteen of these schools had populations of ninety-six to a hundred per cent black students. In 1974 things have progressed to the point where twenty-six schools have over fifty per cent black and eighteen of these schools are ninety-six to a hundred per cent black; whereas fourteen had that situation in 1965.

In the mid-1960's the Fillmore Middle School was established and it was pointed to as a school that would become integrated but that school had a forty-two per cent black population in 1966. In 1974 its population is eighty-eight per cent black.

Clinton Junior High School which was established at a location that replaced a primarily white high school, namely Hutchinson, and Technical High School which had closed, is 98.2 per cent black. In 1966 it was 96.8 per cent black. Genesee Humboldt, another middle school, junior high school, - correction, not a middle school, - Genesee Humboldt also established purportedly to be an integrated school started out in 1966 with 31.5 per cent black. In 1974 it's 90.1 per cent black, and we know the notorious Woodlawn School which was determined to be black by the Board in drawing the boundaries when it was established in the mid-'60's and it is 99.5 per cent black.

* * *

any particular opening until the conclusion of the plaintiffs' case.

THE COURT: That may be done, Mr. Gregory.

MR. GREGORY: Thank you.

THE COURT: All right, Mr. Griffin.

MR. GRIFFIN: Shall I call our first witness, if it please the Court? Mr. Goldfarb.

NORMAN GOLDFARB (2022 Delaware Avenue, Buffalo, New York), a witness called by and in behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. GRIFFIN:

Q. Mr. Goldfarb, you are one of the plaintiffs in this case, is that correct?

A. I am.

Q. And are you a parent of one or more children attending the Buffalo Public School System?

A. I am.

Q. And what is the name of your child and what school does he or she attend?

A. The child's name is Benjamin. He attends School 66.

Q. That is generally in the northern part of Buffalo, am I correct?

A. North Buffalo on Tacoma.

Q. Now, are you also associated in some capacity at present and have you been in years past with the plaintiff, the Citizens Council for Human Relations, Inc.?

A. Yes, I am.

Q. And is that an organization that has existed in this community for over fifteen years and is concerned with matters of human rights?

A. It was formed in 1963.

Q. Now, Mr. Goldfarb, the purpose of your questioning at this time is to identify a couple of maps and we may be required to call you further in this case, but let me just ask you preliminarily have you participated over the years in preparing some of the evidence and matters to be presented during this case?

A. I have.

Q. And just for purposes of the record, were you primarily responsible in December of 1971 in a letter that was addressed to Commissioner Nyquist which started out in words or in effect "It has been over seven years since the Yerby Dixon decision"?

A. I wrote that letter.

Q. Now, we have had marked as Exhibit Number 1 a map which I represent to the Court and counsel is a blow-up of an elementary school district map of the Board of Education of the City of Buffalo which was provided to us by the defendant Board of Education as part of the discovery in this case.

THE COURT: Mr. Griffin, I suppose that since we are going to refer to that quite often during the case, why don't we, - can we put them up on the board, please?

MR. GRIFFIN: Yes.

THE COURT: I think also that, - do you have quite a few maps, Mr. Griffin?

MR. GRIFFIN: I beg your pardon?

THE COURT: Do you have quite a few maps?

MR. GRIFFIN: No. We would be using this one primarily for the next day or two.

THE COURT: Because what we can do if you want, we could get the board from Part II and bring that over here as well, if that would assist you.

MR. GRIFFIN: All right.

THE COURT: Why don't you move it over, Mr. Walsh, so that there will be room for other maps. Why don't we take a brief recess now and in the meantime, Mr. Walsh, will you assist Mr. Griffin in getting the other board?

THE CLERK OF THE COURT: Yes, your Honor.

THE COURT: So in case we need it we can and we will have it available. We will be in recess for ten or fifteen minutes.

(Recess taken at 11:05 a.m.)

* * * * * * *

PROCEEDINGS: After recess, 10:20 a.m.

APPEARANCES: As before noted.

NORMAN GOLDFARB, a witness called by and in behalf of the plaintiff, having been previously duly sworn, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION BY MR. GRIFFIN: (Resumed)

(Plaintiffs' Exhibits Numbered 263 and 264, respectively, marked for identification.)

BY MR. GRIFFIN:

Q. Mr. Goldfarb, we have had posted Exhibit 1 on the board and it is visible to all. Would you tell us what Exhibit 1 is?

A. It is a map which is published by the Board of Education showing the elementary school districts of the city and it also shows the location of the elementary schools, the middle schools and so forth.

Q. Now, this bears the legend in the lower left-hand corner "1972 Buffalo Board of Education Elementary School Districts", is that correct?

A. Yes, it does.

Q. And there is also a key in the square in the lower left-hand corner wherein a solid circle or a large dot signifies an elementary school; a different symbol for a middle school; a different symbol for a vocational school; a dot with one circle around it for junior high school and a dot with two circles around it for a senior high school, is that correct?

A. Yes, sir.

Q. And for example, the numbers 4 and 34 in the southern part or the lower part of the map would be elementary schools 4 and 34?

A. Yes.

Q. And turning out to the Kensington area, 78, 82 or 85 would be elementary schools, is that correct?

A. That is correct.

Q. And where we see Kensington and we see a circle or a dot with two circles, that would be where, Kensington High School, a senior high school is located, is that correct?

A. That is correct.

Q. And turning to the western part of the city we see Lafayette High School, Elementary School 45, is that correct?

A. That is correct.

Q. But the boundary lines that are drawn in are the boundary lines of elementary schools only, is that correct?

A. That is correct.

Q. And now, I notice that there are a number of elementary schools encircled in red, is that correct?

A. Yes.

Q. Now, what is that, - strike that. That was not a part of the original map, was it?

A. The red circle was added on.

Q. You caused that to be added on, is that correct?

A. Yes, I did.

Q. What does the red circle indicate?

A. It indicates that that school is a majority black school.

Q. Now, what was the basis of the information that was used to determine and label a particular school as a majority black school?

A. The information was taken from the Ethnic Census put out by the Buffalo School System for the period October 1973, or that's when it was put out, and I verified the schools which are encircled in red as majority black schools with Mr. James Heck, who is coordinator of integration for the Buffalo Public School System.

Q. Are you familiar with the fact that for the past few years the Board of Education of Buffalo has published an Ethnic Census of the Buffalo Public Schools which contains data as to black, white and other populations of each of the schools?

A. Yes, they have published such documents.

MR. GRIFFIN: If it please the Court, at this time I would offer into evidence Plaintiffs' Exhibit 6, the Ethnic Census for 1973-74; Plaintiffs' Exhibit 7, the Ethnic Census for 1972-73; Plaintiffs' Exhibit 8, the Ethnic Census for '70-'71; Plaintiffs' Exhibit 9, the Ethnic Census for 1969-70.

THE COURT: Any objection, Mrs. Coon? No objection. It may be marked in evidence.

(Plaintiffs' Exhibits Numbered 6, 7, 8, 9, respectively, received in evidence.)

MR. GRIFFIN: Also at this time I would offer into evidence Exhibit 27 entitled "Integration of the Schools, a restatement of the policy by the Regents of the University of the State of New York", published by the Education Department at Albany as of December '69.

THE COURT: No objection. It may be marked in evidence.

(Plaintiffs' Exhibit Number 27 received in evidence.)

BY MR. GRIFFIN:

Q. Mr. Goldfarb, outlined with a heavy black line and also by red in the central portion of the map is a certain area, is that correct?

A. That is correct.

Q. Now, what is that, - what does that designate, that area?

A. That is the district for the Woodlawn Junior High School.

Q. Now, moving to the south of the city at the bottom of Exhibit 1 there is outlined an area in colors black, green and yellow and continuous lines. Would you tell us what that outlines?

A. That is the district for the Southside Junior High School.

MR. GRIFFIN: I have no further questions of this witness at this time. You may ask.

MRS. COON: I have no questions.

MR. GREGORY: Not to get off --

THE COURT: Any questions, Mr. Gregory?

MR. GREGORY: Not to get off on a tangent with respect to this witness, there are questions I would choose to ask him but not relating to the testimony he has already given. If I can be assured Mr. Goldfarb is going to be recalled as a plaintiffs' witness I will reserve those questions until that time.

THE COURT: Mr. Griffin evidently has a plan to try to bring to our attention in an orderly fashion the evidence here and Mr. Goldfarb, as I understand, will be back at another point.

MR. GRIFFIN: He may or may not be recalled to testify, but he will be available to be called at anytime.

THE COURT: All right. I am sure Mr. Goldfarb will be available. Thank you, Mr. Goldfarb.

MR. GRIFFIN: Mr. Arnold Gardner, please.

* * * * * *

ARNOLD B. GARDNER (89 Middlesex Road, Buffalo, New York), a witness called by and in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. GRIFFIN:

Q. Mr. Gardner, have you told us your full name and address for the record?

A. Yes, sir.

Q. And have you been a member of the Board of Education of the City of Buffalo, the defendant Board in this case?

A. Yes, sir.

Q. Now, before asking you more specific questions, of what school are you a graduate, what college or university?

A. I am a graduate of the University of Buffalo and the Harvard Law School.

Q. And you are actively engaged in the private practice of law in the City of Buffalo, is that correct?

A. Yes, sir.

Q. Now, did you attend public school in the City of Buffalo?

A. No, sir. I did not live in Buffalo at that time.

Q. Did you attend public high school in another community?

A. Yes, sir.

Q. Where was that?

A. New York City.

Q. And when did you become a resident of the City of Buffalo?

A. In January of 1947.

Q. And since January of 1947 have you been a continuous resident of the City of Buffalo?

A. With the exception of the time that I was away at law school and in the army, yes.

Q. When did you start to or when did you become admitted to the Bar of the State of New York?

A. In 1954.

Q. And have you engaged in the private practice of law for approximately the past twenty years?

A. Yes, sir.

Q. Have you over the years been active in various community, civic and charitable organizations?

A. Yes, sir.

Q. When did you become a member of the Board of Education of the City of Buffalo?

A. In May of 1969.

Q. And at that time how did one become a member of the Board of Education?

A. By appointment by the Mayor and confirmation by the Common Council.

Q. And at that time how many members were there on the Board of Education?

A. There were then seven.

Q. I would like to ask you some questions which relate to the nature and structure and function of the Buffalo Board of Education itself and in relationship to the Commissioner of Education and the Board of Regents, based upon your knowledge and experience as a Board member. First of all, would you tell us generally what the function of the Board of Education of the City of Buffalo was?

A. Well, the function of the Board of Education is to run the Public School System of the City of Buffalo. The members of the Board of Education as distinguished from the professional staff of the Board are charged with the responsibility of establishing the policy for the operation of the school system.

Q. Does the Board of Education have the power to employ staff?

A. Yes, sir.

Q. And in fact is the Superintendent of Schools, the Deputy Superintendent of Schools, and for that matter, all of the teachers and maintenance personnel in the schools employees of the Board of Education?

A. Yes, sir.

Q. And correspondingly the Board of Education has the power to discharge employees, is that correct?

A. Well, yes, subject to certain limitations that may be imposed upon the Board.

Q. And what would those limitations be?

A. Well, the limitations as to teachers, for example, the provisions of the Teachers Contract and the State Education Law; the Civil Service Law of the State of New York; certain employees are contract employees and those contracts may limit the right to discharge.

Q. Now, the Superintendent Joseph Manch, a defendant in this case, has been the Superintendent of Schools for a number of years, is that correct?

A. Yes, sir.

Q. He is an employee of the Board of Education of the City of Buffalo?

A. Yes, sir.

Q. Now, with respect to the State Education Department, the Board of Regents and the Commissioner of Education, what is the relationship of the Buffalo Board?

A. The Buffalo Board is responsible for carrying out certain mandates, programs and policies that are established by the Board of Regents acting through the State Commissioner of Education.

Q. And can you think of some examples of policies, programs, that emanated from the Board of Regents and the Commissioner of Education in any field that may come to mind where the Buffalo Board of Education implements a policy or program of the Commissioner of Education or the Board of Regents?

A. Well, of course, there are very many of them. The maintenance of an annual school day of one hundred eighty, - a school year, rather, of one hundred eighty days; the inclusion in the curriculum of certain specific studies, social studies, Englishes, the sciences, health subjects; certain matters with respect to expenditure of funds; a wide variety of programatic and operational matters.

Q. And with respect to the location of schools and the construction of new schools, what has your experience been relative to the role of the Commissioner of Education?

A. I have no direct experience in that. My understanding was and is that the --

MR. GREGORY: I am going to object to what his understanding of the subject is.

THE COURT: Mr. Gardner, how long were you on the Board?

THE WITNESS: Five years, your Honor.

THE COURT: From what date?

THE WITNESS: From June, - from May of 1969 through July 1 of this year.

THE COURT: I will overrule the objection.

THE WITNESS: Well, my understanding has been that the Board selects the proposed location of schools and submits that to the City for the acquisition of property upon which to construct the school, as well as for the funding of that project. The degree to which the State Department of Education is involved in that is, I believe, an advisory one. As I say, I have no direct knowledge of any involvement beyond that.

BY MR. GRIFFIN:

Q. Did you have any, - while you were a Board member, did you have any experience for plans for location of schools having been submitted to the Commissioner of Education?

A. No, sir.

Q. Now, you told us that in May of 1969 you came to be a member of the Board of Education by appointment. Did the matter of the status of the racial composition of the Buffalo Public Schools come to your attention?

A. Yes, sir.

Q. Would you tell us in what respect it came to your attention?

A. Well, when I was first appointed to the Board, the Superintendent furnished me with a large group of documents, reports, papers dealing with aspects of school operations in order to familiarize myself with the operation of the Board of Education. Included among those papers were a variety of items relating to matters of the racial composition of the student body of the Buffalo Public Schools. I think that was my first direct exposure to it.

Q. When you reviewed these documents, and did you review the documents?

A. Yes, sir, I read many of them completely and read through and at others.

Q. Did you look into the matter of the composition of the schools, not in each and every school, but overall?

A. In a general sense, yes.

Q. And what did you find with respect to the situation relative to racial balance?

A. Well, I found that the percentage of the total student body of the City of Buffalo which was nonwhite had been increasing and that it appeared to be concentrated in a limited number of schools.

Q. With respect to the presence or absence of integrated schools, what did you find?

A. I really don't recall any specific finding or conclusion that I reached at that time other than, as I said earlier, the black students seemed to be, - the nonwhite students, black and Spanish surnames, seemed to be concentrated in certain schools.

Q. Now, did you direct your attention at all to whether there had been any prior directives from the Commissioner of Education to the Buffalo Board on the subject of segregation or racial balance?

A. Well, either, - the answer is yes.

Q. And what did you find?

A. Well, I found that there had been a prior directive in the so-called Yerby Dixon case from the State Commissioner of Education to the Board and I believe that I saw a copy of that directive, that order, either with the original papers which Dr. Manch furnished to me or shortly thereafter and I also saw a variety of reports which had been prepared dealing with the general subject of your question. I don't recall the other reports specifically.

Q. Now, did, - I direct your attention, Mr. Gardner, to Plaintiffs' Exhibit 102, which is a copy of a letter dated December 13, 1971 to Mr. Ewald P. Nyquist, Commissioner of Education from the, - from Mr. Norman Goldfarb for the Board of Directors of Citizens Council of Human Relations; Reverend Milton Williams, President, and Rafael Dubard, Chairman, Education Committee, Buffalo Chapter, National Association for the Advancement of Colored People. Did this particular exhibit which is a copy of this letter, come to you as a member of the Board of Education?

A. Yes, sir.

Q. And did there come a time that you became president of the Board of Education?

A. Yes, sir.

Q. And when was that?

A. That was in May of 1971.

Q. So you would have become President of the Board of Education a number of months before you received a copy of this Exhibit 2, is that correct?

A. Yes, sir.

Q. And you received this as President of the Board of Education, is that correct?

A. Well, I received it. I don't know if I received it as President or as a member of the Board, but I did receive it.

Q. All right. It was forwarded to you, and does it point in Paragraph 2 thereof, and I quote "It is seven years since the Yerby Dixon petition citing a violation of Section 310 of the State Education Law was filed with your department"?

A. Yes, sir, it does state that.

Q. And does it then go on to describe a chronology of events or lack of events that occurred in between 1965 and the date of this letter?

A. Yes, sir.

Q. Now, do you recall whether that particular letter which is addressed to the defendant Commissioner of Education within the month of December or early January was discussed at any Board meeting?

A. I recall that we received, - I believe all members had received a copy of the letter and that the fact of such receipt was discussed among the Board members. The contents of the letter were not discussed.

Q. I now direct your attention to Plaintiffs' Exhibit 103 and ask you first of all if that is a copy of a letter that was addressed to you as President of the Board of Education by the defendant Commissioner of Education?

A. Yes, it is.

Q. And what is the date of that letter?

A. January 20, 1972.

Q. And did that letter cover the subject of the progressive racial imbalance in the Buffalo Public Schools?

A. Yes, sir.

Q. Did the letter point to the absence, - strike that. Did the letter direct the Buffalo Board to do anything?

A. Yes, sir.

Q. And what did the Commissioner of Education direct the Buffalo Board to do?

A. The Commissioner directed the Board to submit to him by April 1 a desegregation plan for the schools in the Buffalo School System under which every school would substantially reflect the racial composition of the entire district and it also directed the Board to submit to the Commissioner by February 15th, 1972 a progress report.

Q. Did the Buffalo Board of Education on or before April 1, 1972 submit to Commissioner Nyquist a desegregation plan for schools in the Buffalo School System under which every school would substantially reflect the racial composition of the entire district?

A. Well, the Board, - the answer to your question is no, but the Board did submit, as you phrased it, the answer is no, but the Board did submit a plan to the Commissioner which was in part what had been requested but failed to adopt the plan which it submitted to the Commissioner.

Q. You say that the Board submitted a plan to the Commissioner?

A. The Board submitted a plan to the Commissioner at the same time it submitted the plan, - it reviewed the plan itself. It was the so-called Heck Plan or Heck Study which responded in part to what the Commissioner's

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request had been, but the Board did not adopt the plan that was submitted to the Commissioner and reviewed by it.

Q. Well, by, - when I ask submit a plan, I mean that the Board approved a program of action relative to eliminating racial segregation and submitted that to the Commissioner as what they intended to do; was that ever done?

A. No, sir.

Q. When you testified that a plan was submitted, you mean something was available to the Board and was discussed, is that correct?

A. Yes, sir.

Q. But it was not adopted?

A. No, sir.

Q. As a matter of fact, it was received and filed, isn't that correct?

A. Yes, sir.

Q. Was the letter of January 20, 1972 addressed to you as President made available for review by each of the members of the Board?

A. Yes, sir.

Q. And to your knowledge, did each of the Board members either have a copy or review the content of the letter?

A. Both.

Q. And did the Commissioner state on Page 2 of the letter, and I quote, "Faced with the hard fact that segregation is more severe in Buffalo now than it was seven years ago with over twenty schools more than ninety per cent black and twenty-nine schools ninety per cent or more white, it is clear to me that only a new approach can equalize educational opportunity for the children of Buffalo"?

A. Yes, sir.

Q. Now, as a result of this directive of the Commissioner of Education, in January of 1972 was there a Board meeting at which the Commissioner's directive was discussed?

A. There were several Board meetings and Board conference meetings at which the Commissioner's letter was discussed.

Q. Now, I direct your attention to Exhibit 105A, which are excerpts of pages of the Board of Education minutes of February 1, 1972 and ask you whether those contain portions of the Board discussion on the subject of Commissioner Nyquist's directive?

A. Yes, sir.

Q. Now, at that time can you tell us the persons who constituted the Board of Education?

A. Yes. Mr. Carmelo Parlato; Mr. Joseph Murphy; Dr. Matt Gajewski, Mr. Charles Blaine, Mrs. Carol Williams, Dr. George Blackman and myself.

Q. Can you tell us the response that the Commissioner's directive received from the members of the Board?

A. At what point in time?

Q. On or about February 1, 1972.

A. Well, at about February 1, '72 and at all times while the Commissioner's directive was before us, the position of the various members of the Board remained essentially the same. The majority of themembers, four of the seven, were unwilling to comply with the directive contained, or the directives contained in the Commissioner's letter.

Q. And the majority consisted of which Board members?

A. Mr. Parlato, Mr. Murphy, Dr. Gajewski and Mrs. Williams.

Q. What was the position of the other three persons who were in the minority?

A. The other three persons wanted to comply in one measure or another with the Commissioner's directives.

Let me rephrase that. They wanted to comply with the Commissioner's directives although they had different approaches as to how that should be done.

Q. Now, at the meeting of February 1, 1972 the Commissioner's directive was discussed, was it?

A. Yes, sir.

Q. What position, vis-a-vis the Commissioner of Education, did Board Member Parlato take at that time?

A. Well, without referring to the exhibit, just speaking from my recollection, Mr. Parlato felt that the Commissioner had exceeded his authority in issuing the directive; that the substance of the directive was socially and educationally unwise as well as an excess of authority and wanted to resist and oppose it.

Q. Did he in fact say in words or in, - in words, not in substance, - in words, that the Commissioner should be treated respectfully but as an adversary? ADVERSAR

A. Yes, sir.

Q. And I direct your attention to the precise remarks of Board Member Parlato as set forth on Page 226 of the Board Minutes of February 1, 1972 contained in Exhibit 1054, and I quote, "I suggest that we treat the Commissioner respectfully but as an adversary", is that correct?

A. Yes, sir.

Q. And moving to the next page did, - and at the bottom and to the next page, did Board Member Parlato state, and I quote, "I say the adversary nature of the situation is something that should, that we should study promptly. I think we should at an early stage get into conference with the Corporation Counsel the possibility of retaining our own legal counsel in the matter for the moment avoiding the question of what is going to be done concerning ourselves with who is going to make that decision", end quote. Were those his words at the meeting?

A. That is what the minutes state.

Q. And Mr. Parlato, Board Member Parlato was a member of the majority at the time, is that correct?

A. Yes, sir.

Q. And based upon your experience and presence at the Board meetings, did you find that Board Member Parlato's position was persuasive to the other members of the majority?

A. Frequently.

Q. Now, did there come a time shortly after the February 1, 1972 meeting that you, together with the Superintendent of Schools, went to Albany to meet with Commissioner Nyquist?

A. I believe that we went to meet with Commissioner Nyquist prior to the February 1 meeting but after receipt of his letter of January 20th.

Q. And what was the purpose of your going to meet with Commissioner Nyquist?

A. To seek some clarification of the letter and to, - hopefully to arrange for a meeting between the full Board and the Commissioner.

Q. At that time as a member and President of the Board of Education, did you express to Commissioner Nyquist any criticism of his conduct?

A. Yes, sir, I did.

Q. What did you say?

A. Well, I told the Commissioner his letter had caused a great deal of concern in this community and that it appeared to me that it was concern which could have been lessened had he been more, or he and his office been more diligent in pursuing the question of racial integration in our Buffalo Public Schools during the years preceding his letter. I was critical of the State Education Department for continuing to accept the state of affairs in the Buffalo Public School Systems insofar as racial integration was concerned without, as passively as they did. Under the terms of the Yerby Dixon Decision the Commissioner had retained general jurisdiction over the question of racial integration in the Buffalo Public Schools and we had been required to send periodic reports, I believe semi-annually, to the State Education Department describing our programs and our progress towards achieving racial integration in the Buffalo Public Schools or desegregation of the Buffalo Public Schools, however you choose to phrase it, and I told the Commissioner that from reading those reports, at least during the period while I had been on the Board, it had seemed apparent to me that the program had come to a dead halt and it seemed to me that it should have been clearly apparent to him and to his staff and I believed that part of the, - the difficult part of the concern or the subject of his concern as expressed in the letter could have been improved and the situation could have been improved had his office been more vigilant.

Q. What was the, - what, if anything, was the Commissioner's response?

A. He referred to the State Statute which had been enacted sometime previously with respect to the establishment by appointed school boards of school districts and pupil assignments for racial balance purposes and said that their efforts had been stultified or had been deferred, rather, by reason of that litigation and we had a general discussion on what had and had not been done by his office over the years.

Q. And in response to the remarks of a critical nature that you made to the Commissioner of Education in January of 1972, he pointed to a state enacted statute as a reason for inaction on his part, is that correct?

A. Yes. I think he said one other thing too. Either at that meeting, and I believe at that meeting, and I know he said it on a subsequent occasion when he came to Buffalo, and that was he referred to the 4-4-4 Program, so-called, that the Board had adopted, the Middle School Program, and said that they had hoped, - that his department had hoped that that program which had originally been estimated or intended to provide some twelve middle schools in the City of Buffalo by this time, by the present year, would become effective and they had hoped that we had achieved more progress. I answered and he said as a matter of fact that had the Board of Education achieved progress towards implementing the 4-4-4 Program as originally proposed, he would not have been compelled to write his letter of January 20th and would not have the matter before him at that time. I responded to him at the time that it had been apparent for quite a while that the 4-4-4 Program had ceased to exist as to future implementation as a practical matter.

Q. Of course, the 4-4-4 Plan would have some impact upon racial segregation but by no means would it be a complete solution, isn't that true?

A. No, it would not be a complete solution, no.

MR. GRIFFIN: Now, may the record show at this time relative to Chapter 342 of the Laws of the State of New York that in Paragraphs 143 and 144 of the stipulation filed with the Court, that in Paragraph, - that Paragraph 143 of the stipulation agrees to the following facts for the purpose of this case, and I quote, "In 1969, the New York State Legislature enacted Chapter 342 of the Laws of New York, amending 3201 of the State Education Law. Chapter 342 prohibited state education officials and appointed boards from assigning students, or establishing, reorganizing, or maintaining school districts, school zones or attendance units, for the purpose of achieving racial balance in the schools", and Paragraph 144 provides and agrees, and I quote, "Chapter 342 was held unconstitutional by a three-judge court in Lee vs. Nyquist, 318 F.supp.710(1970), affirmed, 402 U.S. 935(1971), on the ground that it involved the state in racial discrimination and impermissible racial classifications". Mr. Gardner --

THE COURT: Excuse me, Mr. Griffin, this particular, - does it explain when that particular section went into effect?

MR. GRIFFIN: It was enacted in 1969, your Honor, and I would surmise effective September of 1969, but I am not sure.

THE COURT: And then it was held unconstitutional by the District Court in --

MR. GRIFFIN: In 1970.

THE COURT: 1970. All right. Very well.

BY MR. GRIFFIN:

Q. Did the Commissioner in your conversation say in words or in substance that he disagreed with Chapter 342 of the Laws of 1969?

A. His disagreement was implicit in the discussion. I don't recall if he made a statement to that effect.

Q. You understood that he was in effect dissatisfied with that?

A. Yes, sir.

Q. All right, but he made no oral expression to that effect in your conversation?

A. I think that I expressed my personal dissatisfaction with it and my recollection is that he by words or a nod concurred.

Q. Did he say, - did the Commissioner say that he made any effort to direct the Buffalo Board to take any steps that would be outside of the prohibitions, albeit prohibitions declared to be unconstitutional, but did he direct the Board to take any steps outside of the prohibitions of Chapter 342?

A. Well, the Commissioner had not directed, - Commissioner Nyquist had not directed the Board to do anything in this subject area prior to his letter of January 20th.

Q. So from the time that you became a Board member in May of 1969 through the letter that was addressed in December of '71 the Commissioner to your knowledge directed the Buffalo Board to do nothing, is that correct?

A. To my knowledge, yes, that's correct.

Q. Mr. Gardner, we now come to a period of time in March of '72 when the Board decides whether or not it will submit any plan to the Commissioner in response to his directive, is that correct?

A. Yes, sir.

Q. Now, prior to the time that the Board made its decision, did the Commissioner come to Buffalo?

A. Yes, sir, he did.

Q. And did he conduct and hold a press conference?

A. Yes, he did. He held first a meeting with the Board and then a press conference.

Q. I direct your attention to Plaintiffs' Exhibit 105 which are portions of the minutes of the Board of Education of February 21, 1972 relating to a press conference with Commissioner Nyquist, is that correct?

A. Yes, sir.

Q. You were present?

A. Yes, sir.

Q. Other Board members were present?

A. Yes, sir.

Q. Was the Commissioner asked by a member of the press on February 21, 1972 the following question, and I quote, "Commissioner, what are the alternatives if the Board is unable to agree on a plan?" Was he asked that question?

A. Yes, sir.

Q. And did he respond in part as follows, and I quote, "There are two remedies in the law and you can read the law as well as I can. When a board, see, a school district or a school board is an extension of the state. Education is a state function and when a board refused to carry out educational policies, the Board of Regents or the Commissioner of Education, the two remedies that are specifically stated are the withholding of state aid and the initiation for proceedings to remove the board and I hope we don't have to come to that." end quote. Were those the words of the Commissioner on February 21, 1972?

A. Yes, sir.

Q. Now, while we are on the subject, in March, the following month, the Board resolved not to submit a plan to the Commissioner, is that correct?

A. Yes, sir.

Q. You went off the Board of Education and ceased to be a Board member as of, - was it May of this year?

A. No, July 1 this year.

Q. July 1, 1974. Now, to your knowledge, at anytime subsequent to March of 1972 did the Commissioner of Education take any step to remove a Board member?

A. He did not.

Q. Did the Commissioner of Education address any communication by letter or otherwise indicating or threatening to remove a Board of Education member?

A. Not to my knowledge.

Q. Did the Commissioner of Education at anytime subsequent to March of 1972 when the Buffalo Board refused to submit a plan take any steps to your knowledge to withhold aid?

A. No, sir.

Q. To your knowledge, did the Commissioner of Education at anytime subsequent to that date file any petition, obtain any order to show cause, undertake any Article 78 proceeding or otherwise seek a court order from a state or federal court seeking to direct the Buffalo Board of Education to implement his directive to effect racial desegregation in the Buffalo Public Schools?

A. He did not.

Q. Previously, Mr. Gardner, you mentioned that during the early months of 1972 after the Commissioner directive that there was available to the Board of Education a study or plan or proposal, if you will, which was made with a view to suggestions or a program for effecting desegregation. I think you called it the Heck Program, is that correct?

A. It was commonly known as the Heck Report or the Heck Study, yes, sir.

Q. I direct your attention to Plaintiffs' Exhibit 106 and ask you if this a copy of the so-called Heck Plan?

A. Yes, it is.

Q. Can you recall approximately when that particular plan came before the Board of Education?

A. Yes, sir. It came before the Board for, - it was presented to the Board rather formally and in detail on the same day that the Commissioner was in Buffalo, February 21, 1972.

Q. And where did it emanate? Who is Mr. Heck?

A. Well, it originated approximately a year earlier when a motion was passed by the Board. I had introduced it and the Board by a vote of five to two adopted a resolution that a study be made with respect, and I believe it is, - the language is quoted in the introduction here, that the Board adopt a resolution as follows: "That the Board requests the Superintendent to have the staff prepare for use of this Board and the community advisory committee a study of some of the implications, problems and possibilities of the following: One, cross busing program in Buffalo; two, use of existing buildings not now being used for middle schools for middle school purposes". That motion was passed and the outcome of it finally was the report here which was prepared by a committee under the direction of Mr. Heck as chairman, consisting of school, - members of the school staff and members of the community.

Q. So the Board in effect requested a study of the possibility and feasibility of achieving integration through the use of cross busing and use of buildings for middle schools, is that correct?

A. The conversion of existing buildings not then being used for middle school purposes into middle school purposes because it had become apparent that we weren't getting any money to construct new middle schools and the thought occurred that perhaps existing buildings could be converted to that purpose at lesser cost and we might proceed with the Middle School Program.

Q. Does Exhibit 106 address itself to the second aspect, namely the conversion of some existing structures to middle schools?

A. No, it does not. Nobody ever addressed themselves to the second part of that question. It was discussed in the most casual way and never really got very far off the ground.

Q. Now, can you recall the date that the Board resolved whether or not they would, - it would comply with the Commissioner's directive?

A. I think it was March 22nd or 23rd 1972.

Q. And would you tell us what occurred at that meeting and what the results were?

A. The Board of Education had its regular meeting that day. It was a Wednesday and we met as regularly scheduled except that instead of meeting in our Board chambers on the eighth floor of City Hall, we met in the Common Council Chambers that day because we had a very large attendance. There may have been, - the newspapers estimated four hundred fifty people. I don't know exactly how many. The entire agenda, - well, the agenda was put aside and we took up as the first item of business the question of the proper response to be given to Commissioner Nyquist's January 20th letter. We deferred the remainder of the agenda until the afternoon. We had a list of some twenty-nine or thirty people who came to speak and they did so Most of them speaking in opposition to the Commissioner's request and in support of the Board's rejection of that request and in opposition to further activity to desegregate the public schools. There were some speakers who spoke in favor of the Commissioner's request and there were some speakers who spoke on collateral but not directly related issues. At the end of all the presentations by the public, each Board member spoke and presented his own point of view. Following that, Mr. Parlato introduced a resolution that the Board send to the Commissioner a communication which he then read, he had prepared, and the essence of the communication was that the Board of Education found that it could not comply with his request to submit a plan of the kind described consistent with the responsibilities of the Board as the Board viewed them. That motion was seconded and there was a motion to table it which was defeated and then the motion passed four to three.

Q. Was the majority for the same four persons you have previously described?

A. Yes, sir, it was.

Q. And was the three voting the same three you previously mentioned?

A. The three minority was the same as before. After that there was a second motion that was introduced that the Heck Report to which we have just described be received and filed. That in the practice of the Board being tantamount to discarding it and that was made, I believe, - I believe by Mr. Murphy, but in any event that motion, a motion to table that fell and that motion was also passed by a vote of four to three, the same four, the same three. Finally there was a third motion introduced by Mr. Murphy, I recall, that the Board go on record that the Board as presently constituted was opposed to any form of forced transportation of students for racial balance purposes. Again the motion to table. That fell and that was also passed by the same four to three vote.

Q. I direct your attention to Plaintiffs' Exhibit 108 which is an interoffice memorandum of March 23, 1972 from Florence H. Mazur, Assistant Secretary of the Board of Education, to the Board Superintendent, Dr. Joseph Manch, relative to desegregation study.

THE COURT: Excuse me, Mr. Griffin. What is this Exhibit number again?

MR. GRIFFIN: Exhibit 108.

THE COURT: What date is it?

BY MR. GRIFFIN:

Q. March 23, 1972, your Honor. That would be the day after this meeting, is that correct?

A. I think the meeting was either the 22nd or the 23rd.

Q. And does the Assistant Secretary, Florence Mazur, did she take minutes or was in charge --

A. Yes.

Q. -- of the Board's records as of that date?

A. Yes, she did and was.

Q. And did she advise the Superintendent, and I quote, "The Board of Education at a meeting held on March 22, 1972 approved a motion to submit a letter to Commissioner Nyquist informing him of the Board's inability to produce a plan for desegregation of the Buffalo Public Schools on April 1, 1972 as requested", is that correct?

A. Yes, sir.

Q. I direct your attention to another communication to Dr. Manch from Florence H. Mazur which is contained in Exhibit 111, and this is dated March 28, 1972 and the subject is Board action, and I quote, "The Board of Education at a regular meeting held March 22, 1972 approved the following motions: Approved to receive and file the staff report entitled A Study of Desegregation dated February 21, 1972 which was prepared by the Advisory Planning Council on desegregation and commonly referred to as the Heck Report. Approved that the Board as presently constituted be opposed to any form of forced busing", is that correct?

A. Yes, sir.

THE COURT: Excuse me, Mr. Griffin. Do these communications go to Superintendent Manch or to Commissioner Nyquist?

MR. GRIFFIN: On the face of them, each of the exhibits, these memorandums purport to only go to Dr. Manch.

THE COURT: I see. Mr. Gardner, as far as communicating with the Commissioner, was Dr. Manch, - was that one of his duties? Would he send on to the Commissioner the pertinent results of Board meetings or would the Board do that itself?

THE WITNESS: Well, in this case, your Honor, I believe that the Secretary of the Board was instructed to send the communication directly to the Superintendent, - to the State Commissioner. That was the first of the three votes that we took at that meeting. The second, - the general practice I think would be for the Commissioner, - for the Superintendent to get in touch with him.

BY MR. GRIFFIN:

Q. Well, to shed some further light on that, attached to the March 23, '72 memorandum from Florence Mazur to Dr. Manch is a copy of a letter of the same date, March 23, '72, to Commissioner Nyquist, advising him that the Board was not coming up with a plan, is that correct?

A. Yes, sir.

THE COURT: And that is what exhibit?

MR. GRIFFIN: That is attached to Exhibit 108.

THE COURT: 108, all right.

BY MR. GRIFFIN:

Q. Now, before the vote was taken on March the 22nd, 1972, Mr. Gardner, you had an opportunity to speak, did you not?

A. Yes, sir.

Q. And I direct your attention to Exhibit 107 which are excerpts of the Board's minutes of March 22, 1972 and I will ask you whether you brought to the attention of the members of the Board of Education prior to the time that they cast their votes certain instances of actions and lack of actions which in your judgment contributed to segregation in the Buffalo Public Schools?

A. Yes, I did.

Q. And did you state on March 22, 1972 the following, "We debate on the Board sometimes with respect to questions of de facto and de jure segregation. It has been commonly assumed that Buffalo, as with most northern cities, offers an illustration of de facto segregation. I am not sure whether I agree with that. I think that we, for many years, tolerated by indifference and by custom what the courts I think some day will treat as de jure segregation. Certainly it is true in the districting of Woodlawn Junior High School, carefully selected for the black community. Certainly it is true in the permission we give to students such as those white students who tend to attend, - live, rather, in the East High School District, giving them opportunity to study Polish and thereby go to other schools, other languages. Certainly the same thing is present in the existence of School 16 and all", I can't read that, "school in substantially all-white neighborhood and other districting and option districts that we have established. Certainly the same thing is true in large part in the establishment of those standards that we find somewhat embarrassing in which, thank goodness, we are moving away from, but which we tolerated to date in the vocational and technical school admission policies of the Board. Certainly it is true in the failure of the Common Council of the City of Buffalo to provide money to implement the Middle School Program for all these years. Certainly it is true in the failure of the Common Council to provide money to the Bishop Ryan High School because of the fear of what it would do racially. Certainly it is true in the historical portable classroom controversy and a variety of other things. The day will come, I believe, when all those things and others that this Board does and does not do will be considered state action, de jure segregation in violation of the Constitution".

Those remarks were made in the presence of all the Board members prior to the vote on March 22, 1972 in which the Board rejected the directive of Commissioner Nyquist to desegregate the public schools of Buffalo and to submit a plan on or before April 1, 1972, is that correct?

A. Yes, sir.

THE COURT: I think it is probably a good time. We will take a recess now and we will return at 2:00 o'clock and continue the testimony.

MR. GRIFFIN: May I just take care of one housekeeping item?

THE COURT: Yes.

MR. GRIFFIN: We have had marked two additional exhibits, your Honor, which were not available to us until yesterday under subpoena. They are Exhibits 263 and 264. They contain the findings and report and backup data of the principal investigator from the HEW, Mr. Gilbert Francis, who will be called as a witness either late today or tomorrow and they will be used and referred to and I would like, because I have had the opportunity to see them for the first time yesterday, to make them available to Mr. Gregory and Mrs. Coon and Mr. Sedita for review at anytime over the recess because some or all of them may be offered in evidence or used upon Mr. Francis' testimony.

THE COURT: As I understand it, in your recent letter to me, Mr. Griffin, you indicated that there would be a stipulation, a final stipulation available that Mrs. Coon had signed one on behalf of her client and Mr. Gregory had signed the stipulation.

MR. GRIFFIN: Yes, and please correct me if

I am not accurate, because of location of Mrs. Coon in Albany and Mr. Gregory in Buffalo, we had them each sign the same stipulation but separate copies. I have prepared and in my office and I will bring this afternoon one of the same where the signatures are not in it and if we could all sign it, then we would have one so we are not shuffling back and forth.

THE COURT: Usually in these cases I end up with so many copies of the same thing that it is very confusing. Just so that, and maybe you will be able to tell me early this afternoon so that I can plan here and perhaps plan for other lawyers and other litigants, I know it was hard in this kind of a case to figure how long we would be so it would help me if perhaps you can give me some guidance later today. I may say to you that on our calendar, and I don't know how it is on the state or on the city's calendar, but our calendar, October 14th is Columbus Day and we will not be in session. That is a Monday. That is now two weeks away, but I thought I would call that to your attention now. Are there any days in which, Mrs. Coon or Mr. Gregory, Mr. Griffin, that you cannot be here because of important commitments somewhere else that you know of now?

MR. GRIFFIN: Your Honor, I had assumed in the scheduling of our case that Mondays were not a day of proof because of special term and sentencings, so we have scheduled nothing for next Monday.

THE COURT: Next Monday, the 7th, will be taken up with our regular special term calendar so we won't be here Monday and also if we go into the following week, I have a special term calendar on the 15th, that Tuesday, but --

MR. GRIFFIN: I would really hope that we are able to finish. I know that on behalf of the plaintiffs, most of our proof and witnesses will be over this week, barring extended examinations, and generally I think the Court finds that after the first witness or two, things tend to go a little faster since much is established, and we do have one or two out-of-town witnesses who come from considerable distances whom we do have to schedule next week, but they are not long witnesses and we would have no objection if the defendants go forward.

THE COURT: All right. We will take those things up as they come. We will be in recess until 2:00 o'clock.

(Recess taken at 12:40 p.m.)

* * * * * *

PROCEEDINGS: After recess, 2:10 p.m.

APPEARANCES: As before noted.

ARNOLD B. GARDNER, a witness called by and in behalf of the Plaintiff, having been previously duly sworn, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION BY MR. GRIFFIN: (Resumed)

MR. GRIFFIN: May it please the Court, Mrs. Coon and Mr. Gregory --

THE COURT: Excuse me. Mrs. Coon, late this morning Commissioner Nyquist's office called to inquire about starting time of court and I believe my secretary may have said it was to begin at 10:00. I don't know whether there is some problem.

MRS. COON: I think he was planning what time. He is to be here next Tuesday and the Commissioner does have a schedule in New York City for Tuesday evening and a request that he be gotten on as early as possible.

THE COURT: We could probably take him out of turn anyway. Before I forget it, Mr. Griffin, the 11th which is a Friday, I will be able to tell you in a few days better, but it may be that I may not be able to be here on that day.

MR. GRIFFIN: I have now the hopeful original stipulation which I have signed and signed on behalf of Mr. Schwartz, so if Mrs. Coon and Mr. Gregory want to sign it, we will have one copy. I have checked through the pages and I find all pages are there.

(Stipulation referred to signed by Mrs. Coon and Mr. Gregory.)

MR. GRIFFIN: May the record show I am now handing to the Court a single stipulation with the signatures on Page 46 and the stipulation goes through

Paragraphs 161 and the material thereafter is not the subject of the stipulation.

THE COURT: All right. This will be filed and made part of the record in this case and it will be considered by the Court in the same manner as if it were sworn testimony of the witnesses.

BY MR. GRIFFIN:

Q. Mr. Gardner, returning to the events in early 1972 after the Commissioner's directive of January '72 you gave some evidence relative to a press conference when he was present. Do you recall that?

A. Yes, sir.

Q. Was there, - you also told us that there was an informal type meeting with the members of the Board and the Commissioner prior to this public press conference, is that right?

A. Yes, sir.

Q. Now, at that time was the Commissioner's directive discussed?

A. Yes, it was.

Q. And at that time did various members of the Board express themselves thereon?

A. Yes, sir.

Q. Now, relative to members of the majority which you have identified as being Messrs. Parlato, Murphy, Gajewski and Williams, is that correct?

A. And Mrs. Williams.

MR. GREGORY: May it please the Court, at this particular time I would like to offer an objection to the continued use of this word "majority", as though this is a certainty in each and every and all matters pertaining to votes taken on the Board of Education or educational policies adopted by the Board or not adopted by the Board. If there is a particular situation where certain people in each instance every time a vote is taken or a policy adopted where there is seven members, I would assume, I think it is unfair at this particular time to keep referring and putting into the record something about a majority, a majority, as though this never changed, it never stops, it makes no difference what we are discussing or what the vote is on a particular issue.

THE COURT: Please, Mr. Gregory, there is no jury here and your objection is noted. I think we all understand that if the majority constituted on some occasions some of the minority members and the minority constituted some of the majority, Mr. Griffin will clearly make that apparent, if that is the case. Go ahead, Mr. Griffin.

BY MR. GRIFFIN:

Q. Now, on the occasion of this conference with the Board and meeting prior to the press conference, would you describe the positions that were taken with the Commissioner by the four members that we identified as members of the majority at that time?

A. Well, the principal spokesman for what you call the majority, - what was the majority, actually, was Mr. Parlato and Mr. Parlato and Commissioner engaged in quite a lengthy dialogue. Mr. Parlato's position being as he stated it to be, that the school integration program that the Board of Education was then carrying out in his mind were improper socially and legally and he would like to see them repealed, reversed, but that since he felt he was unable to secure such action of reversal, he was opposed to any expansion of the integration of the schools and he presented to the Commissioner a series of arguments why he felt that was improper. The Commissioner responded to him. They had quite a discussion and I remember the Commissioner finally saying to him at the end of the talk "Mr. Parlato, you have got a problem for every solution I have got". Mr. Murphy's position and one that he expressed many times during this period was that there was a great exodus of white families from the City of Buffalo and I remember his saying that we have such an exodus of white families from Buffalo now, God help us if we do what the Commissioner is asking us to do. Dr. Gajewski spoke, as he often did, and as many of the majority members, - Dr. Gajewski as he often did, spoke in terms of philosophically wanting every child to have equal opportunity with every other. However, he described the resistance and the opposition which was to be found in many parts of the City to the type of thing that Commissioner Nyquist had asked us to do and stated that he was concerned with the rights of the, - not of the white children as well as those of the nonwhite children. Mrs. Williams was by and large silent, expressed few, - made few comments.

Q. You stated that Mr. Parlato who was the most outspoken of the four members of the majority opposed any effort at integration, is that true?

A. Yes, I believe that's true.

Q. And he so expressed himself?

A. I was on the Board with Mr. Parlato, I would say, for two and a half to three years before he left the Board and he expressed that opinion many times on, - in connection with many specific items that arose.

Q. And you mentioned that Mrs. Williams was generally silent. Did she express on those occasions support of so-called neighborhood schools?

A. Mrs. Williams also often expressed support of neighborhood schools.

Q. Did she express consistent opposition to any means of achieving integration that would involve the use of busing?

A. At the elementary level, yes. On one occasion in a secondary school matter her position changed.

Q. Now, Mrs. Williams was a relatively new member of the Board of Education, is that true?

A. Yes, sir.

Q. And was there a vacancy some few months before the Commissioner's directive came down in the Board?

A. There was a vacancy at about that time. I don't recall exactly, but about that time.

Q. And the power to appoint a member of the Board of Education, I think you told us, vested with the Mayor of the City of Buffalo, is that correct?

A. Yes, sir.

Q. And the then Mayor was Mr. Frank Sedita, is that correct?

A. Yes, sir.

Q. And do you recall that there was public,-that there were public statements relative to the position that

Mrs. Williams would take on the Board of Education if she were appointed?

A. I recall there was much public discussion of it. I don't recall any particular statements, but I recall very considerable discussion and I can tell you there was very considerable discussion at the Board on the subject you mention.

Q. And were names of persons advanced to the then Mayor as possible persons who would be suitable to serve on the Board of Education?

A. Yes, sir.

Q. Were names suggested by yourself or other Board members of persons who would be sympathetic with complying with the Commissioner's directive and continuing directive from 1965 to eliminate racial imbalance in the Buffalo Public Schools?

A. I don't recall that I advanced any name, nor to my knowledge did any other Board member. Frankly, I believe that it was inappropriate. I do remember on one occasion a number of the Board members including myself were at some meeting with Mayor Sedita and what I recall as being a jocular sort of a way teased with him about the vacancy and I remember he teased right back and said "Render unto Caesar the things that are his", meaning he would make the appointment and none of us were really suggesting any specific names that he should consider.

MR. GRIFFIN: At this time I would like the record to show the content of Paragraph 130 of the stipulation under the category "Board Membership". 130(a) provides, and I quote, "In January 1972 the Board was considering a request by defendant Nyquist to propose further plans to reduce racial isolation in the Buffalo Public Schools. (b) Mayor Frank A. Sedita appointed Mrs. Carol Williams to the Board of Education. In support of the appointment, the Mayor declared in a letter to Councilwoman Slominski that Mrs. Williams' appointment would break the deadlock. He added 'I have made my decision. It affirms my position against cross busing. Mrs. Williams had made it clear that she shares my belief with respect to the busing issue'", and Paragraph 131(a), small "a" in parentheses, "Mrs. Williams has voted in a manner consistent with the above expectations after declaring at her first meeting", quote, "I am against busing in any shape or form", end of quote, March 8, 1972 and small "b", in parentheses, "On March 28, 1972 Mrs. Williams joined with three other members of the Board to table the integration plan described in 108". The record may show an inconsistency between the date of March 22, 1972, the Board meeting, and the date of March 28, '72, just read, but that can be ultimately corrected in the record.

THE COURT: All right.

BY MR. GRIFFIN:

Q. Now, Mr. Gardner, at the meetings after the Commissioner's directive including this informal meeting, did any member of the Board in the majority, namely, Parlato, Murphy, Gajewski or Williams, advance any proposals or plans of any nature to comply in whole or in part with the Commissioner's directive to alleviate racial segregation?

A. They did not.

Q. And did those four named members openly oppose any steps to comply with the Commissioner's directive?

A. Well, I don't know what you mean by "openly". They, - I can tell you that the three other members of the Board advanced in a series of meetings a variety of proposals which would have if not adopted the Commissioner's, - carried out the Commissioner's directive in entirety at once would have worked in that direction and recommendations and proposals that the three members of the minority felt would be acceptable in some form to the Commission, and all of those attempts at reaching some form of accommodation were rejected out of hand by the four members of the majority.

Q. As a matter of fact, the so-called Heck Report that was proposed, did that have any full or complete discussion by the Board?

A. No. The Board just viewed it as being, - the majority just viewed it as being preposterous on its face. I think that it received more attention of the Board in its presentation by Mr. Heck's staff than the Board ever gave it in all the months that followed, among the members of the Board.

Q. After the letter response which was proposed by Mr. Parlato and approved by the majority on March 22, 1972 was resolved to be sent to Mr. Nyquist, did you as President forward that letter?

A. No. That would normally have been my responsibility but I informed the other members of the Board that I was so totally in disagreement with the action of the Board that I could not in good conscience forward that letter and I instructed the Board Secretary to do so.

Q. Is it a fact that when the various proposals were made by you and other members of the minority for some effort or plan to comply with the Commissioner's directive that the response of all four members of the majority in varying degrees of intensity was that we can't, we shouldn't, we won't?

A. Basically, yes.

Q. And actually at Page 90 of your testimony, just to refresh your recollection, some year and a half or so, in December of 1973, at Page 96, was exactly that, was it not?

A. Yes. I think that is a fair characterization of what happened.

Q. Now, is it not true that the Board members were aware in January, February and March of 1972 that each year the number of schools which were ninety per cent or more black were increasing and the number of schools that were predominantly white were increasing?

A. There is no question that the Board was aware of that and that was, - it was to address that fact that in the proposals that the minority advanced we in each case began with a declaration of commitment, a redeclaration of the commitment of the Board to the goals of racial integration and equal educational opportunity therefrom and we were even unable to secure the agreement of the majority members to a redeclaration of that policy established by the Board. The answer we were given was that in the climate as it existed in the community at that time such a declaration of principle would be misunderstood by the community.

Q. I direct your attention to Exhibit 6 which is the Ethnic Census of the Buffalo Public Schools for 1973-74, and to Page 13 thereof which lists the elementary schools, correct?

A. Yes, sir.

Q. And each elementary school is given with its number of black pupils, the per cent of black pupils, the number of Spanish surname pupils and the per cent, the number of other pupils and the per cent and the total number of pupils in the school, is that correct?

A. Yes, sir.

Q. Now, for example, starting with School 4 it shows that School 4 was 54.8 per cent black in 1966 and increased to sixty-five per cent black by 1972, is that correct?

A. Yes, sir.

Q. It shows that School 6 in 1966 was 93.5 per cent black and was 91.5 per cent black in 1972, is that correct?

A. Yes, sir.

Q. And I won't go through all of the schools because much of this is in the record, but to point to a few others, it shows that School 12 was 98.1 per cent black in 1966 and was 99.7 per cent black in 1972, correct?

A. Yes, sir.

Q. School 23 was 14.5 per cent black in 1966 and increased to 86.8 per cent in '72, correct?

A. Yes, sir. Mr. Griffin, while I doubt that many members of the Board of Education during the period in question could have recited without reference to that report, the statistics you are giving I have no doubt that each and every member of the Board of Education knew the substance of what you are reading, knew the fact that they were an increasing number of schools which were all black and which were all black to a larger degree than they had been when the whole integration furor began. During the period of time when we were considering the Nyquist letter and how to respond to it, we received at the Board for review the Ethnic Census for the preceding year. That would have been the 70-71 year. That came in during the meeting in February, I believe, of 1972 when we were considering the Nyquist report and we were well aware of these trends and we discussed the report at great length to no avail during this period.

Q. And these Ethnic Censuses were prepared by the Board of Education?

A. They are prepared and furnish useful information for almost every purpose, but action by the Board if one views the historical record over the last five years.

Q. Was there a copy of these Ethnic Censuses for these years, at least for the years '69, '70, '71 and '72 and '73 made available to each Board member?

A. Each Board member had a copy of the Ethnic Census for each of those years.

Q. For example, School 54 which was 56 per cent black in 1966 increased to 64 per cent black in '72, is that correct?

A. Yes, sir.

Q. School 57 went from 40.9 per cent to 49.2 from '66 to '72, correct?

A. Yes, sir.

Q. School 62 went from 14.1 per cent black to 92.5, - correction, 78.6 per cent in that period?

A. Yes, sir, and it has gotten worse since then. None of the trends you are showing in this have been reversed since 1972, nor has the Board taken any action to reverse them.

Q. And just to pick out three or four more, in the middle and junior high schools, Genesee Humboldt was

31.5 per cent. That is a junior high school, is that not correct?

A. Yes, it is.

Q. 31.5 per cent in '66 and was 80.7 per cent by '72?

A. Yes, sir.

Q. Fillmore Middle School was 42.4 per cent in 1966 and went up to 81.8 per cent by '72.

A. Yes, sir.

Q. Now, at these meetings, Mr. Gardner, you addressed yourself to some of the causes of the progressive segregation in the schools, did you not?

A. Yes, sir.

Q. And after the meeting at which the Boards, - at which the Board rejected the Nyquist directive you prepared a letter to Commissioner Nyquist outlining various things that had occurred, did you not?

A. Yes, I did.

Q. I direct your attention to Plaintiff's Exhibit 110.

A. Yes, sir.

Q. And I ask you what that is?

A. This is a letter which I prepared and sent to Commissioner Nyquist on March 29th, 1972 and it really is what was in effect a minority report with respect to the action that the Board took at the March 22 meeting.

Q. And did you start out by saying to Commissioner Nyquist that on January 20th of 1972 you, referring to the Commissioner "wrote to this Board of Education and directed that we submit to you by April 1, 1972 a desegregation plan for the schools of the Buffalo Public School System under which every school would substantially reflect the racial composition of the entire district"?

A. Yes, I said that.

Q. Did you further say in your letter "As you are aware, at our regular Board meeting on March 22, 1972 this Board adopted various resolutions, the effect of which was to reject in entirety your January 20 letter"?

A. Yes, sir, I said that.

Q. Did you enclose and forward to the Commissioner a copy of the transcript of the March 22, '72 meeting which you said would speak for itself?

A. Yes, yes.

Q. Did you say on the bottom of Page 3 of this letter, "As you well know, it has been some years since any serious efforts have been made locally to move ahead with school desegregation, nor did your office take any measures to require increased desegregation efforts until your January 20th letter"?

A. Yes, sir, I said that.

Q. And did you in the last portion of your letter itemize for the Commissioner a number of specific instances which you felt constituted what is referred to as de jure segregation and which contributed to the progressive racial isolation and segregation of the Buffalo Public Schools?

A. Yes, sir, I did.

Q. What was the first that you brought to the Commissioner's attention?

A. May I refer to the letter?

Q. You may refer to the letter.

A. I referred to the districting of Woodlawn Junior High School contrived only a few years ago so as to make that school all black.

Q. Now, the racial census shows, does it not, that the Woodlawn School, - incidentally, can you recall approximately when the Woodlawn School was opened?

A. In the mid-'60's, '65, perhaps; '64; perhaps a year or so earlier. It is in the '60's.

Q. And is it an accurate statement that when it opened it was all black?

A. When it opened it was all black and it was obvious that it was going to continue that way under the districts as established.

Q. And according to Exhibit 6, the Ethnic Census, Woodlawn which had a population of 1,347 black pupils as of January '66 was 99.2 per cent black as of that time, is that correct?

A. Yes, sir.

Q. And as of the latest date, namely, October '73, as of this report, the black population is 99.5 per cent, is that correct?

A. Yes, sir.

Q. Now, at the time that the determination was made to build the Woodlawn School, and you are familiar with the boundary as it is outlined on Exhibit 1 in red, is that correct?

A. Yes, sir.

Q. At the time it was determined to build Woodlawn were various proposals made to the Board of Education which would --

MR. GREGORY: Just a minute. Excuse me,

Mr. Griffin. It seems to me, your Honor, that earlier in the testimony Mr. Gardner testified he had been a Board member since approximately 1969, some five years subsequent to the creation of Woodlawn Junior High School. Now, if Mr. Gardner is going to testify heretofore from direct knowledge of the facts, fine, but if he is going to testify with respect to things he has heard or knows, then I am going to object to his testimony unless he specifies from where he obtained his knowledge, your Honor.

THE COURT: I think that may be a good plan, Mr. Griffin.

MR. GRIFFIN: Yes. Well, what I would like to do then is to direct the Court's --

THE COURT: Is somebody else going to be here to trace the Woodlawn history?

MR. GRIFFIN: There may be someone and it is covered extensively in the stipulation, your Honor, so I would just like for the record to refer to that portion of the stipulation starting with Paragraph 24 and through Paragraph 33 that deals with that subject and I will not read it into the record, your Honor, because it is somewhat extensive and contains various boundary proposals.

THE COURT: It says "Among the various alternative plans that were proposed"?

BY MR. GRIFFIN:

Q. That's correct, your Honor, and other matters, and I just refer the Court, - unless the Court wants me to read it into the record, but I think it contains about five pages and will probably take about twenty minutes to read into the record. I would also read into, - because it is relatively brief, your Honor, I direct the record and the Court's attention to Paragraph 141 of the stipulation under the category "Siting", with an "S", - "and Construction", wherein it states, "Defendants Commissioner and Regents have approved the siting and construction of Schools including Woodlawn and 39 which they knew would create, maintain and perpetuate racial isolation and segregation". The first item under your category that you referred to as de jure segregation in your letter to the Commissioner dealt with Woodlawn School, is that correct?

A. Yes, sir.

Q. Will you just reorient as to the date of this letter?

A. March 29, '72.

Q. Now, what was the second matter of de jure segregation that you brought to the Commissioner's attention?

A. What I described as the device of allowing students to transfer from the East High School District to South Park High School in order to take Polish, a subject conveniently not offered at all black East High School.

Q. Now, would you explain what that involved?

A. Well, the Board of Education pupil attendance policy requires every student to attend the high school of the district in which he resides. There are located in the East High School District a considerable number of white families. Yet, the attendance at East High School is all black and during this period --

MR. GREGORY: Excuse me, Mr. Griffin, for interrupting again. Your Honor, I am going to object to the form of the answer. A considerable number of white families. He isn't giving any specific time with reference to the remarks he is making. When is he referring to and I certainly object to the general term of " a considerable number of families".

THE COURT: You can cross examine, Mr. Gregory. I do think, however, as much as possible, Mr. Griffin and Mr. Gardner, please try to give us numbers, as far as you can.

THE WITNESS: Well, your Honor, I don't know the exact number of white families, but I do know during the period, - that during a period shortly after the date of my letter to Commissioner Nyquist, during lat '72 and '73 the Board ascertained, and ascertained by studies and by examination of the pupil enrollments at the various elementary schools in the East High

School District that the number of white students graduating from elementary schools in the East High School District was something between 150 and 200 on an annual basis and those students would have been required, - were required under the normal pupil attendance policies of the School Board to attend East High School as residents of that district. Now, the exceptions to those normal procedures would include students who left the district to attend vocational or technical schools; obviously students who left to go to private or parochial schools and the Board also has a policy, has a policy that if a student desires to take a course which is not offered at his, - at the high school of his district, he may apply for permission to do that. In this particular case, what I was referring to is the fact that over the years that the records that the Board has assembled and that have been presented to the members of the Board during this period of 1972 revealed that there had been developed a pattern of transfer of students --

MR. GREGORY: I am going to have to object to this again, your Honor. This is purely conclusion.

THE COURT: Mr. Gregory, if you have an objection, say you have an objection. You can cross examine. I will listen to argument later on. There is no jury here. You object?

MR. GREGORY: Yes.

THE COURT: Thank you, overruled. Continue.

THE WITNESS: That there had developed a pattern of white students leaving the East High School District in which they resided to attend high school, primarily at the South Park High School, in order to take subjects and particularly Polish, almost exclusively so, that were not offered at the East High School, and from time to time, - this was a, - from time to time this arose at the Board. I would say it arose and received brief attention on only a few occasions. It was one of those items with which we are all familiar. It was one of those items that people mention and drop because they are embarrassed by it and from time to time it would be proposed that Polish be offered at East High School and there would be a series of knowing smiles around the table and after a moment's discussion, that would be abandoned. What I referred to when I wrote to Commissioner Nyquist was my belief, and I think the belief of, - I will speak for myself, obviously. It was my belief that an escape valve, if you will, had been contrived to allow students to attend a high school other than East because the white students did not want to attend a substantially all black high school.

BY MR. GRIFFIN:

Q. Did you know, Mr. Gardner, that the Board of Education through the year 1960 offered Polish at East High School?

A. I learned that recently.

Q. Did you know that on or about the year 1960, and I will read the provisions of the stipulation into the record in a moment, that it was determined no longer to offer Polish at East High School?

A. Yes, sir, I learned that recently.

Q. Did you know that it is a policy of the Board of Education expressed though its staff persons and the Superintendent that if there are a sufficient number of students in a given high school who want a particular language, that it is the policy to offer that language at the school where the students express interest therein?

A. Yes, sir, that is the policy.

Q. Now, you have described students obtaining what are referred to as language transfers to attend schools outside of the East High School District, although they live in the East High School District and are required to attend school within their district under normal Board policy, correct?

A. Yes, sir.

Q. Now, South Park High School on Exhibit 1 is located as the lowermost high school shown on the map, is that correct?

A. Yes, sir.

Q. That would be out in the area of South Park Avenue and generally approaching Lackawanna, is that correct?

A. That's correct.

Q. And as you move further to the north, you would come to South Side which is a junior high school, correct?

A. Yes, sir.

Q. But East High School is located, and we don't know if there is any scale of miles on this particular exhibit, but East High School is indicated in circles just above the Number 24 School, is that correct?

A. Yes, sir.

Q. Were you aware that in addition to students from East going to take Polish at South Park that a number of white students also went from East High School District to Kensington High School?

A. Yes, sir, and to Bennett.

Q. Which is the northernmost high school illustrated with the dot, with two circle lines around it at the top of Exhibit 1, is that correct?

A. Yes, sir. I think I probably singled South Park out for too much special credit. I should have listed some of the others. The pattern, I think, was more pronounced to South Park, but it existed as to the other schools as well.

Q. At anytime while you were a Board member, did Superintendent Manch or the Director of the Office of Pupil Placement Services that has responsibilities for approving transfers come before the Board and ask that the Board stop this particular practice?

A. I don't know if it was Dr. Manch or the Director of Pupil Personnel who raised the point in the first instance, but we did have a series of changes with respect to that policy. The language transfer policy or the special transfer policy, we had a series of changes which as of early this year had come, circled round and we were right back to where we were when I wrote my letter of March 29, '72.

Q. You now refer to the fact that on or about July 1, 1972, after this action was commenced, the Board did something to rescind the language transfers, correct?

A. The Board did two things.

Q. Before you explain --

A. Yes, sir.

Q. I am going to ask you that later on. What I should have done is ask you in between 1969, May, when you came on the Board, up through July of 1972, did the Board do anything during your period relative to stopping these transfers?

A. No, sir.

Q. I would like to direct the Court's attention tothe following provisions of the stipulation that relate to this subject:

Item 46, that it had been the policy of the Board of Education to offer languages in each high school if there are a sufficient number of students who express a bona fide interest in taking such language.

Item 53, that prior to on or about the end of the 1950's, a course or courses in Polish were taught at

East High School.

54, that on or about 1960, Polish was discontinued as an offering at East High School.

55, that subsequent to 1960, a number of white students residing in the East High School District have been permitted to transfer to other schools, particularly South Park High School and Kensington High School for purposes of taking a foreign language including Polish, Russian and Italian.

56, that as of October 22, 1971, two hundred fourteen students residing in the East High School District were attending school at South Park. Of these, one hundred seventy-six students were registered in the Polish program; one hundred seventy-three white and three black. Thirty-eight students were registered in the Russian program; twenty-four white and fourteen black.

57, that as of April 12, 1972 there were for the school year 1971-72 thirty to thirty-five students taking a foreign language at Kensington High School who were residents of the East High School District.

Now, Mr. Gardner, you are aware of the fact, are you not, that the complaint in this case was filed sometime during the end of June, 1972?

A. Yes, sir.

Q. And did the Board of Education determine to offer Polish, Russian and Italian at East High School by resolution of July 6, 1972?

A. In effect. Actually, if I recall that resolution correctly, it was not limited to the particular languages, but rather was a resolution which said that we should offer in every school, including East High School, all subjects for which there was a sufficient demand rather than allow students to transfer out to other schools for those subjects.

Q. And then do you recall that on May 22, 1974 the Board of Education rescinded the July 6, '72 resolution?

A. I recall it very well and I recall the circumstances that led to the rescission of that resolution.

Q. What were those circumstances?

A. After the resolution, - the resolution was adopted in the first instance reversing the original policy and eliminating the transfer out rule exception in 1972. In the fall of 1972 we expected to enroll at East High School based upon the change of policy approximately one hundred fifty white students. As I said earlier, that was an estimate of the total number of white graduates of elementary schools in the area and it made allowance for the transfer of those who would go to vocational schools in ordinary course and to parochial schools and the like, and it was as a practical matter there was great effort expended by the community. We had a series of meetings with the East High School school community to discuss and with their advisory council to discuss ways in which this new world would come into being and the necessity of providing a congenial environment for the new schools who would be coming into what would have been an all black school and a wide variety of programs were adopted and there was a series of meetings with the parents, with PTA's of schools which were in the area which provided white graduates that would presumably attend East High School. A very great deal of effort went into it. The opening of the school year in 1972, it developed that we had a mere handful of white students. I would estimate, the best of my recollection tells me, less than a dozen. The same thing repeated itself in the following year, except that we had fewer in the fall of 1973. During the year '72, during the school year '72-'73 and during the school year '73-'74, some attempts were made to enforce the pupil attendance law with respect to the students who were not attending. Some investigation was conducted by the Board of Education to find out why we had only a sprinkling of white students and not the numbers that we had expected. We expected about the same enrollment based upon the graduating classes in the second year, so that theoretically there should have been a couple hundred to three hundred white students at that school.

Q. Not to cut you short, but, Mr. Gardner, did the Board ultimately determine that these transfers over the years had reached a point where even if all the white students were to go to East, they were still going to be going to a segregated school which had become primarily black over the years?

A. Well, if you mean that the --

THE COURT: Do you mean if all of the one hundred fifty possible new white students had attended East it would still be almost entirely black, is that your question?

BY MR. GRIFFIN:

Q. Yes.

A. Well, it would still have been predominantly black, but if you had one hundred fifty students for years, for four years, that being a senior high school, your Honor, you would have ended up with six hundred out of what is at present an enrollment of thirteen hundred. You would have had a very significant presence of white students in that school.

Q. The reverse is true, by removing year after year from the early '60's the significant white presence you therefore had and created a predominantly and practically all black school by the year 1972, isn't that correct?

A. Yes.

Q. And so if the record shows that as of October of 1972 there were 1,370 students, black students in East High School which constituted 98.3 per cent black, correct?

A. That's what the report shows, yes, sir.

Q. Excuse me for cutting you off. I didn't intend to be rude, but if you want to complete --

A. I will complete it very briefly but perhaps my answer was more extended than it should have been, but in any event, it became apparent to the Board as a result of investigation that there was wide-spread evasion of the new policy the Board had established in 1972. The evasion took the form of, - took a variety of forms which you can ask me about if you want. Some attempts were made to enforce the New York State Pupil Attendance Law. I am a lawyer and I am proud of the courts and I am proud of our judicial system and I have got great respect for both. I do not have a particularly high opinion of the way that the litigation over the Pupil Attendance Law and enforcement of our policy at East High School was conducted. I think it was very regrettable. Standards were applied that are not generally applicable, but in any event, the court, - the School Board finally concluded early in this year that the policy itself had become futile and Dr. Blackman and Mrs. Baugh, the two black members of the Board who have been staunch integrationists, said that it is time to give up humiliating that East High School community and to repeal and reverse our position because we are not getting white students because of every form of evasion. I voted against that because my view was that before we adopted a change, we should have something to change to, so in any event, we gave up the policy.

Q. The present status, although you don't know what is going on on a day-to-day basis in terms of acting on transfers, but the present status is a return to what existed as of the spring and early months of 1972 relative to the offering of languages at East High School, isn't that correct?

A. Either that or you could phrase it as an argument that we never really changed what the situation was at East High School.

THE COURT: Mr. Gardner, you were starting to tell us what form some of the evasions took. Did any of these during the '72 to '74 period while the Board had this different policy in effect, did any of these forms of evasion come to the attention of the Board?

THE WITNESS: Yes, sir, they did.

THE COURT: Can you explain what occurred, please?

THE WITNESS: Yes, sir. Some of them consisted of the giving of false addresses, very difficult to prove, but to the satisfaction of the Board false addresses given by children whose families resided in the East High School District, but who gave the addresses of relatives who resided in other high school districts in the community. In some cases it appeared to my satisfaction as a member of the Board and to the satisfaction of other members of the Board that preferential standards for admission to vocational and technical schools were applied. Students who applied for admission, competition for admission to the vocational and technical schools, who applied to that division were given favorable status on certain occasions by the admitting officers of those schools in order to enable them to leave the East High School District. In certain cases there were transfers for courses that could have been offered at East High School. It is true that we had several courses at East High School under the policy of offering courses for all students who were interested. We had several classes in which the classes were very small, half a dozen students in the class because of the policy, but there were other occasions in which students were allowed to leave the school to take courses where the class could have been offered at East. There were also, and this got to be a matter of considerable discussion at the Board, - there were also medical and social work certificates issued which in discussion among the members of the Board appeared to those of us, - appeared to all, I believe, but to several who spoke out, including myself, to be spurious. I think that would generally cover the classifications.

THE COURT: Go ahead, Mr. Griffin.

BY MR. GRIFFIN:

Q. Mr. Gardner, what is the next item of so-called de jure segregation that you brought to the Commissioner's attention as contributing to the progressive segregation of the Buffalo Public Schools?

A. The existence of School 16 as a substantially all black school in a substantially all white neighborhood.

Q. Now, directing your attention to Exhibit Number 1, we see School 16 encircled as one of the predominantly black schools, is that correct?

A. Yes, sir.

Q. And according to the racial census as of --

THE COURT: 16, what main artery is that on?

THE WITNESS: 16 is on Delaware Avenue just north of Bryant Street, runs through to Linwood.

BY MR. GRIFFIN:

Q. You say that is a predominantly white neighborhood?

A. Yes, I believe it is still a predominantly white neighborhood. Yes, sir.

Q. And I direct your attention to the Ethnic Census which establishes that as of January of 1966 School 16 was 83.9 per cent black and as of October of '73 it is 88 per cent black, is that correct?

A. Yes, sir.

Q. Now, the School 16 District extends, does it not, just approximately one block east of Main Street, is that correct?

A. On Balcom, I think. Yes, one block east of Main Street, yes.

Q. Does it, however, include many streets to the west of Main, to the west of Delaware, including such streets as Ashland, Hodge, Northwood, Oakland, St. Andrews Walk, St. George's Court, Barker, and other streets, is that correct?

A. Yes, sir.

Q. And are those streets, - were they not in 1966 and are they not still predominantly white areas of the City of Buffalo?

A. That is my observation.

Q. Is not the western boundary of School 16 Richmond Avenue?

A. It looks to be on the map. I don't know offhand.

THE COURT: Is that a copy of the same map?

BY MR. GRIFFIN:

Q. It is a copy of the same map, but it is easier to read.

A. Yes, sir, the same avenue.

Q. And is not the northern boundary Lexington Avenue?

A. Yes, sir.

Q. And is not the southern boundary a street that goes into Symphony Circle which would be --

A. North Street.

Q. North Street?

A. Yes, sir.

Q. And there are, - this is with the exception of an institution such as the Children's Hospital in this area, is this not principally a residential area?

A. Well, there is some business on Elmwood Avenue, of course, in the district, but it is principally residential, yes.

Q. Now, what did you find was the situation relative to School 16?

A. Well, as I said in my letter to the Commissioner, I found that it was almost entirely an all, - a black school, and I found that difficult to understand in view of the fact that there were, - there was a majority, if not a substantial majority, of white families living in the school district. East of Main Street you would have found more black families and I know you would have found some black families west of Main Street, but the predominant population of that district is white and it seemed anamalous to see an all black school in that district. I was also concerned about the proximity of School 16, an all black school, to School 30, an all white school. Those are only some blocks apart and the pairing, - I am not sure I mentioned that in my letter to the Commissioner or not, perhaps not, but the pairing of the two schools has always intrigued me.

Q. I direct your attention to School 30 which district is contiguous to School 16 on the map, is that correct?

A. Yes, sir, on the north.

Q. School 30 is located on what street?

A. Elmwood Avenue near Ferry Street or near Utica, - near Ferry, I was right.

Q. Between Ferry and Cleveland, would you say that is

correct?

A. Yes, that's right.

Q. I direct your attention to the racial census which shows in the same year 1966 when School 16 was over eighty per cent black and had a total student population of three hundred seventy-three, that School 30 in 1966 had one black out of two hundred nineteen students for a .5 per cent, and had two hundred eighteen whites.

A. Yes, sir.

Q. Is that correct?

A. Well, yes, sir. If the report indicates that, I would rely on that.

Q. And then as of 1973, School 30 had but five blacks and six hundred ninety whites?

A. School 30?

Q. Correction, correction. I misread it. School 30 had eleven blacks for 5.8 per cent and one hundred seventy-seven whites for a total population of one hundred ninety, correct?

A. Yes, sir.

Q. But at the same time, School 16 had a total population of one hundred ninety-seven with one hundred seventy-four blacks, constituting eighty-eight per cent, is that correct?

A. Yes, sir.

Q. Now I would like to direct your attention and the Court's to the following provision in the stipulation, that as of March 10, '72 there were twenty-seven students in School 30 from School 16's district.

MR. GREGORY: I beg the Court's pardon. Would Mr. Griffin let us know which stipulation?

THE COURT: You did not tell us which stipulation.

MR. GRIFFIN: Thank you. Item 51.

THE COURT: 51. In School 16 District how many attended?

MR. GRIFFIN: There were twenty-seven students in School 30 as of that moment, namely, March 10, '72, from the School 16 District. Now, in addition to --

THE COURT: You don't break it down white or black?

MR. GRIFFIN: No, your Honor. We will have to do that through --

THE COURT: What year is this?

MR. GRIFFIN: This is in the year of March 10, '72.

THE COURT: 1972, all right.

BY MR. GRIFFIN:

Q. We will, because that is certainly pertinent. We have some records that will later be introduced as to the number of blacks and whites in that period. Did you also find, Mr. Gardner, that students who were in the School 16 District also went to School 38 which is a school directly, - a district directly contiguous to the 16 District and directly to the west?

A. Yes, sir.

Q. I direct the Court's attention to the, - strike that. Was School 38 a predominantly white school?

A. Yes, sir.

Q. And according to the Ethnic Census, School 38 as of 1966 had a total black population of three, amounting to .4 per cent and a total other population or a non-black population of seven hundred four for 98.2 per cent, is that correct?

A. Yes, sir.

Q. And that as of October 1973 there were fifty blacks in the school, amounting to 7.8 per cent, but there were five hundred fifty-four nonblacks, amounting to eighty-seven per cent in School 38.

A. Yes, sir, as the report indicates.

Q. And that is located on Lowell Place, is that right?

THE COURT: What main street is that near?

THE WITNESS: It is near Vermont Street, your Honor. It is just, - really near East Utica, - West Utica, rather, a block and a half from there.

BY MR. GRIFFIN:

Q. I direct the Court's attention to Paragraph 52 of the stipulation wherein it states that as of March 10, '72 there were fifteen students attending School 38 who resided in the School 16 District. Now, Mr. Gardner, did you itemize in your letter to the Commissioner as an additional example of de jure segregation the situation relative to Schools 4 and 34?

A. No, I did not, except, - I didn't itemize that specifically. I think I included some general language which covers a variety of things that one thing I intended to cover by it was our experience with respect to discussions as to the consolidation of the two school districts we have just been talking about really, 30 and 16. We had and are still having a very unsatisfactory experience with respect to attempts to consolidate that, - those two school districts and a third, but I don't know whether you want me to get into that or not.

THE COURT: Mr. Griffin, we will take a recess for a while. We will be back in about ten or fifteen minutes.

(Recess taken at 3:25 p.m.)

* * * * * * *

PROCEEDINGS: After recess, 3:45 p.m.

APPEARANCES: As before noted.

ARNOLD B. GARDNER, a witness called by and in behalf of the plaintiffs, having been previously duly sworn, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION BY MR. GRIFFIN: (Resumed)

MR. GRIFFIN: May I proceed, your Honor?

THE COURT: Yes.

BY MR. GRIFFIN:

Q. Mr. Gardner, you have described what you regarded as matters of de jure segregation in the central part of the City dealing with Woodlawn, with the adjoining School 16 district and two schools to the north and to the west, 30 and 38. Now I will ask you to move, if you would, to the southern part of the City down on the waterfront Buffalo River area in the Schools 4 and 34 area. Are you aware, - strike that. Were you aware when you wrote to Commissioner Nyquist in March of 1972 of the situation relative to Schools 4 and 34 in the same school district?

A. Yes, sir, I was.

Q. Did you include the 4 and 34 situation within your letter as an example of de jure segregation?

A. No, and I read the letter and I am surprised. I included it in some general language, perhaps, but not within those numbers and I am curious in retrospect why I didn't.

Q. Do you regard the School 4 and 34 situation as you know it as an instance of de jure segregation?

A. Oh, yes, I did. The Board established those districts, yes.

Q. Incidentally, the Board is the one who has the power to change school boundaries, isn't that correct?

A. Yes, sir, that is correct.

Q. And Schools 4 and 34 are both within the same outlined school district on this Exhibit 1, are they not?

A. That is correct.

Q. Now, is School 4 predominantly a black school?

A. School 4 is overwhelmingly black and School 34 is overwhelmingly white.

Q. And they --

THE COURT: If there is no school boundary in that area, Mr. Gardner, how would a pupil know what school he is supposed to go to?

THE WITNESS: The school, - there is a, - although the boundary line doesn't show dividing those schools, your Honor, there are school districts within that overall district that apply to the children going to 4 and 34. It is not an optional district but it is, - there are certain optional features to the 4 and 34 District. Do you have the optional district map? Maybe I can answer the Judge's question more clearly with it.

BY MR. GRIFFIN:

Q. Before we get to that, is it not true that the, - a large public housing project, the so-called Perry Project exists within that school district?

A. Oh, yes, it exists. Yes, sir, it does.

Q. And is it not true that over the years that the blacks who lived in that project have been assigned to go to

School 34 or to School 4?

A. School 4, yes, sir.

Q. And does that not account to a great extent for the reason why School 44 is predominantly black?

A. Yes. That is the most adjacent population.

THE COURT: You said "School 44".

THE WITNESS: You mean School 4.

BY MR. GRIFFIN:

Q. School 4.

A. That's what I thought you meant.

Q. Has it been a case over the years that the Board and the School Department has had the children from the Perry Project go to School 4?

A. Yes. Well, the pupil attendance figures will show that that has been the case for many years.

Q. All right, and has it been a fact that the whites in that community have regarded 34 as their school to go to?

A. That has been the attendance pattern and, as a matter of fact, I think it is more than just the pattern. There is, - I can't be just too specific. Perhaps somebody on the Board staff can, but there is something in the Board records which divides that seemingly single district into attendance zones for the two schools.

Q. I direct your attention to the fact that according to the Ethnic Census in 1966 School 34 was 11.5 per cent black and 86.9 per cent other, with 1.6 per cent Spanish, and that as of 1973 the black population is 4.6 per cent, the Spanish surnamed is 8.8 and the other, the white is 86.6 per cent out of a total population of two hundred eighty-three, correct?

A. Yes, sir.

Q. Whereas the School 4 which is encircled as a predominantly black school as of 1966, had 54.8 per cent black pupils and in 1973, 61 per cent black pupils, is that correct?

A. The report you are reading from so indicates and I believe it is accurate.

Q. I direct the Court's attention and I won't read Items 66, 67, 68 and 69 of the stipulation relative to the schools, but I will read 70 which provides and states, and I quote, "The Buffalo Board has thus operated two unbalanced schools in the same school attendance district". Now, Mr. Gardner, would you tell us what the next instance of de jure segregation that you feel contributed to the progressive segregation in Buffalo was that you mentioned in the letter to Commissioner Nyquist?

A. Other districting patterns including the establishment of so-called optional districts which allow white children to escape the black schools to which they would otherwise be assigned.

Q. And I will not take the time now to question you relative to the optional districts since that will be proved through other witnesses and exhibits, but you did bring, - you did cite that as an example to the Commissioner, is that correct?

A. Yes, sir.

Q. What is an optional district, just so we know?

A. An optional district is a geographical area which abuts on two school districts and which supposedly, because of reasons of geographic convenience, is an area which the residents of which may attend a school in either of the adjoining school districts or abutting school districts. It relates sometimes to peculiar geographic features and sometimes I believe to other circumstances, other causes, other reasons.

Q. I direct the Court's attention to that portion of the stipulation under optional areas from Items 34 through 40 and 41, and I will read for the record 41 which states, "Maintenance of the optional areas has contributed to racial separation and isolation in the Buffalo Public School System", and Item 40, "The optional areas were maintained long after their adverse impact on racial integration was brought to the attention of the Buffalo defendants". Mr. Gardner, what is the next item that you mentioned to the Commissioner in your letter?

A. The discriminatory pattern of vocational and technical school admissions improved only slightly in recent months.

Q. To what do you refer?

A. I referred to the fact that statistics showed that the percentage of black students admitted to vocational and technical schools was in most instances at considerable, - considerably different from the percentage which those black pupils bore to the total secondary school population and to the conclusion which I had reached and to the conclusion which I have reached that such circumstance was not and, - was not an accidental occurrence unrelated to intent and purpose.

Q. Can you tell us some of the means, - well, strike that. Can you tell us some of the causes or devices that were used in admissions to vocational high schools that contributed to that?

A. Well, the admission to vocational high schools was based upon academic record and a personal interview. Mr. Griffin, with regard to this answer, may I refer to something that I have with me that I think will help?

Q. Certainly, anything.

THE WITNESS: May I step down, your Honor, for a moment?

THE COURT: Certainly.

BY MR. GRIFFIN:

Q. All right. You are referring to something that helps refresh your recollection on the subject?

A. Yes. I am referring to a report which the school board received under date of June 30th, 1971 from the Assistant Superintendent in charge of pupil personnel dealing with vocational and technical acceptance or rejection of black eighth and ninth graders.

Q. Now, having referred to that and refreshed your recollection, will you tell us what were some of the contributing factors to the admission of black students to vocational high schools?

A. Well, as I had started to say, the admission to vocational high schools and with one exception technical high schools related to the, - was based upon academic standing in the elementary schools and performance on an interview, personal interview with an admissions officer at the particular vocational or technical school to which the pupil sought admission. It appeared as a result of studies that were conducted that those admission standards were not applied uniformly to black students as to white students who were seeking admission. The statistics showed that there was, as I indicated earlier, a considerably lesser percentage of black applicants accepted than of white. With respect to the technical high school, the one technical high school which caused the greatest discussion, Hutchinson Central High School, an examination had been administered there for many years in addition to personal interview and in addition to the academic record. There was considerable discussion before the Board. Many speakers came and the Board spent a good deal of time considering whether that test as administered did not operate, - was not calculated to produce a more successful result for white students than for black students, whether it was culturally biased or otherwise failed to test motivation and a variety of other circumstances which the black students claimed were relevant to their admission. Finally some improvement was achieved in both of these areas.

Q. Would you tell us what is the next item that you referred to?

A. The failure of the City, referring to the City of Buffalo, to provide money for middle school conversion or construction so as to implement the 4-4-4 Plan and the failure of the City to provide funds for the acquisition or lease of Bishop Ryan High School in South Buffalo because of the anticipated racial balance of the student body if the school were operated at that location.

Q. Now, you refer therein to middle schools, is that correct?

A. Yes. Yes, sir.

Q. And you refer to a 4-4-4 Plan, correct?

A. Yes, sir.

Q. Would you tell us what those mean?

A. Well, a 4-4-4 Plan is a plan in which education is offered in blocks of four grades each; four elementary grades, the four primary grades and the four intermediate grades and the four secondary grades and the theory of the Middle School Program was that students would attend the first four grades in a school in their own neighborhood feeder pattern but that all of the schools in a given area would feed into a single middle school which would be a departmental school. That is, children with individual assignments as in secondary education, not all conducted by the same teacher, but different classes in different parts of the building and that that would be a school into which children from various parts of the City and various elementary schools might feed, and then the third of the four grade blocks being high school.

Q. Now, did the Common Council of the City of Buffalo, a defendant in this action, appropriate the funds necessary to embark upon the 4-4-4 Program?

A. The Common Council provided funds under difficult circumstances for one middle school, the West Hertel Middle School. That is the only one.

Q. West Hertel Middle School?

A. Yes, sir.

Q. And that is located in the northwest portion of Buffalo in the upper left of Exhibit 1, correct?

A. That's correct.

Q. And it did not appropriate funds for any other proposed schools, is that correct?

A. For any other proposed middle schools, that's correct.

Q. Where were other middle schools proposed?

A. In 1970 the Board received a proposal for the construction over a period of years of originally twelve and then later I believe it became six larger middle schools. They were proposed at various places throughout the City and if you want, I have the report in my briefcase with me and there is a map which describes the locations. Those were proposed as locations for middle schools. In addition to those proposed locations in 1973, the Board specifically designated a location on the west side, on Busti Avenue, as a site for a middle school and submitted that to the Common Council. The middle schools were very much a part of the integration program that the Board adopted in 1967.

Q. But beyond West Hertel nothing was done to implement that program, is that correct?

A. Well, Fillmore Junior High School was converted to a middle school. It was built as a high school and converted to a middle school.

Q. And that was scheduled to be an integrated school, was it not?

A. Yes, sir, it was hoped to be an integrated school.

Q. But the records we showed demonstrated that it was in the thirty per cents in 1966 but it is now a predominantly black school, is that correct?

A. Yes, sir.

Q. Now, was there problems even in completing the construction and funding of the West Hertel School?

A. Yes, sir, there were.

Q. And what were those?

A. While the building was underway, the Common Council refused to authorize bonds and to appropriate money to complete the construction of the building once it was announced that it would become a middle school.

Q. And can you tell us originally what racial balance West Hertel Middle School was to have?

A. I believe seventy per cent white and thirty per cent black.

Q. And is it true that West Hertel Middle School has not achieved that balance but has had a racial balance that is less than the thirty per cent black?

A. May I refer to the report?

Q. Yes, please do.

A. Well, as of 1973 this indicates twenty-seven and a half per cent black.

Q. And do you recall that sometime after its, - it was constructed and open it had in excess of thirty per cent black but that the black percentage has in fact been reduced at West Hertel Middle School?

A. I believe that it had approximately thirty per cent black in the first, - when it first opened. The difference is about ten per cent. I don't recall the exact figure, but I believe it started about thirty but how close I couldn't say.

Q. And it is your understanding as a Board member that the funds to implement a program must come from the Common Council of the City of Buffalo through resolution, is that correct?

A. I am not sure if I understand your question.

Q. Perhaps I am a poor physical finance questioner, but the Board of Education does not have the power of itself to raise funds, is that correct?

A. The Board is entirely fiscally dependent, yes, sir.

Q. And fiscally dependent upon whom?

A. Well, upon the City of Buffalo, the State of New York through the City of Buffalo, the federal government; a variety of other sources. Basically the City and through the City and State.

Q. But at least in the first instance in order to have the funds available to implement a construction program it is necessary for the Common Council to vote approval of that expenditure, is that true?

A. Yes, sir, that is true.

Q. Now, you also mentioned in your letter the subject of Bishop Ryan High School. Would you tell us what that is about?

A. Bishop Ryan, the South Park High School and Southside Junior High School were both badly overcrowded. The Bishop Ryan High School was operated by the Catholic Diocese of Buffalo.

Q. Incidentally, you mentioned that Southside and South Park were overcrowded?

A. Yes, sir.

Q. Did this overcrowding exist at the same time that the

Board was permitting the transfers out of the East District to occur into South Park?

A. It did and that inconsistency was pointed out on many occasions to the members of the Board who favored the transfer out policy.

Q. Excuse the interruption, but continuing on the discussion of Bishop Ryan High School.

A. Bishop Ryan High School was in the same general vicinity in South Buffalo.

THE COURT: Excuse me. Why don't we locate it on the map.

BY MR. GRIFFIN:

Q. Are you familiar with the fact that Bishop Ryan High School is located on Clinton Street to the East of Bailey Avenue?

A. Maybe I misspoke. It services the same population as the other. I have been at the building.

Q. Let's see if we can find where it is and perhaps we can mark it on the exhibit.

THE COURT: Is it close to School 69?

MR. GREGORY: It is just down the street a couple of blocks from it, your Honor.

THE COURT: School 69 is on Clinton Street and that is east of Bailey.

MR. GREGORY: Your Honor, Bishop Ryan is just a couple of blocks to the east on the same side of the street.

THE COURT: As 69?

MR. GREGORY: As 69.

MR. GRIFFIN: Would it be permissible for someone to mark it with an "R"?

THE COURT: Mr. Gregory, I think, is familiar.

MR. GREGORY: I know where it is if I can find the streets here. It is so hard to make out what the streets are. In any event, it is right around here someplace. I can't even read them. It is just down here a little ways. It is right across from Neighborhood House Number 1.

THE COURT: Mr. Griffin, School 69 and Houghton Park, - Houghton Park is behind it and Bishop Ryan High School is just a block or two to the east.

MR. GREGORY: About three blocks, I think.

THE COURT: Would that be all right?

MR. GREGORY: Yes, for all practical purposes.

THE COURT: I will put an "X" on it.

BY MR. GRIFFIN:

Q. Now, if Bishop Ryan had been --

THE COURT: I am sorry. I had a case a few years ago in which there was another city involved and we spent a lot of time with the geography of the wards and districts and I guess we are coming back to that again. Well, go ahead, Mr. Griffin.

BY MR. GRIFFIN:

Q. Bishop Ryan High School was a private high school operated by the Roman Catholic Diocese of Buffalo up to sometime in the early '70's, is that correct?

A. Yes, sir.

Q. And then that school discontinued operation, right?

A. Yes, sir.

Q. And was the building for sale or lease?

A. It was originally for sale and later for lease.

Q. And having oriented us there, will you tell us what occurred relative to the proposed use of Bishop Ryan

High School.

A. The Board of Education developed a plan which would have used Bishop Ryan High School to relieve overcrowding at Southside and at South Park by taking students who would have otherwise entered the ninth grade and providing relief at both the other schools. That required additional funding from the Common Council and application for such funding was made and after much discussion, many reports and a meeting between the School Board and the Finance Committee of the Common Council, the application was rejected. During the course of the discussion with the Common Council the Board was asked if it would give assurances as to the population mix which would attend the Bishop Ryan School if it were used by the City, by the Buffalo Public Schools, and there was quite some discussion about that.

Q. What sort of assurances relative to population mix were asked for?

A. My recollection, if it is correct, it concluded as an assurance that the population for the Bishop Ryan building would be the same mix exactly as it would otherwise have entered the ninth grade at South Park which was a partially integrated student body.

Q. But that would have involved a very small percentage of blacks, would it not?

A. I don't remember the numbers. It would not have been a large percentage. It would have been, - the point was made to the School Board it would have been more blacks than had attended Bishop Ryan High School while the Diocese operated it and at one point the Board was requested to give assurances that the building under the auspices of the Board would have no more blacks than the building had when operated under the auspices of the Diocese.

Q. Were any such assurances given by the Board?

A. My recollection of the way that the Board left the matter with the Common Council was that the meeting of the Finance Committee of the Board attended also by representatives of the Diocese and we said that the population of Bishop Ryan if acquired for the schools would be just the same as the population would have been in the ninth grade at South Park.

Q. And I direct attention to the Ethnic Census wherein the South Park percentage of black as of October '73 was 10.2 per cent.

A. Yes, sir.

Q. That would have been, although it is 10.2 per cent, that would have been a significantly greater percentage of blacks attending that physical structure previously known as Bishop Ryan High School in that particular neighborhood than had attended when it was operated by the Diocese of Buffalo, is that correct?

A. That is correct, and I believe that was the heart of the problem.

Q. And even with a ten per cent proposed black population or thereabouts approximating the overall South Park population, the Common Council refused to appropriate moneys or to authorize moneys for the lease of Bishop Ryan High School, is that correct?

A. Yes, that's correct, notwithstanding a serious overcrowding condition which continues each year, including this year, to require ad hoc remedies in reassignment of pupils within that South Buffalo area.

Q. In your letter of March of 1972 to the Commissioner, did you make reference to any other items of de jure segregation other than what you have mentioned already?

A. No. I think those were all of the specific items to which I referred.

Q. You made reference in your oral remarks that are recorded in the minutes of the March 22, 1972 meeting under this subject to an additional matter, and I quote your words, "Certainly it is true in the historical portable classroom controversy and a variety of other things", correct?

A. Yes, sir.

Q. What were you referring to relative to the historical portable classroom controversy?

A. I was referring to a situation which was finally concluded in my early period of service on the Board when the last appeals were resolved. The Board of Education in furtherance of its racial integration policy had sought to purchase eighteen portable classrooms to add on student space, possible space for additional students in schools which were to participate in the so-called QIE, Quality Integrated Educational Program, as receiving schools for black children from other parts of the city.

Q. This was the voluntary busing?

A. Voluntary busing program that the Board had adopted and still carries out and when the Board announced that it planned to do that in order to provide space for the black children who would be moved in, the Common Council adopted a resolution, an ordinance, an amendment to the Zoning Ordinance, I believe it was, to the effect that any addition to an original building would have to be of the same composition and construction as the original building was. I may be simplifying it, but that was the effect of it.

Q. I think just if I may, refer the Court and Mr. Gardner to Items 112 through 119 of the stipulation, wherein it provides in Item 114 that the amendment to the Building Code by the Common Council was done on June 11th, '68 and that on, - according to Item 117(a) on July 9, 1968, the same Common Council, by an eleven to four vote, reaffirmed its Ordinance and overrode a veto of Mayor Frank A. Sedita and that on May 16, 1969, in a decision of the Fourth Department, reported in 32 Appellate Division 2d 98, the court affirmed a Supreme Court, Erie County order of September 9, '68 holding the Ordinance unconstitutional. Now, this amendment to the Building Code that we refer to, that was conduct of the defendant Common Council of the City of Buffalo, is that correct?

A. Yes, sir.

Q. And, - strike that. Now, after your letter to the Commissioner of Education was written, was it acknowledged at some date?

A. I believe that I had an acknowledgement from the Commissioner stating that he was reviewing the situation with his staff and would be in further communication with the Board.

Q. At anytime did you receive a communication from Commissioner Nyquist in which he disagreed with any of the assertions contained in your letter of March 29, 1972?

A. Not that I can recall.

Q. Now, I direct your attention to Exhibit 113 which is a letter of May 15, 1972 to Dr. Joseph Manch from Mr. Thomas Sheldon, Deputy Commissioner for Elementary, Secondary and Continuing Education of the State Education Department.

A. Yes, sir.

Q. And would you tell us without reading the whole letter, did this advise Superintendent Manch that the State would be conducting further investigations and studies?

A. Yes, it does that.

Q. Does it do anything else that I haven't properly interpreted? Is there anything else?

A. Well, what it, - it refers to the fact that after the Commissioner was advised that the Board had rejected his request at his further request, the Board did meet with the Deputy Commissioner Dr. Sheldon and a member of his staff, a Mr. Grenda, with respect to further proceedings on the subject the Commissioner agrees.

Q. Did that result in any report coming from the State which would, - which constituted a proposal or a means to implement the Commissioner's directive so that Buffalo could eliminate its racial segregation?

A. Yes, it did. The Commissioner asked if his staff could try to do what we as a Board had been unable to do to produce a study and report for integration of the schools. Dr. Grenda and some people from his staff spent a lot of time here in Buffalo and in November of 1972 produced such a report which was circulated among the members of the Board of Education.

Q. And did that contain proposals and means to achieve racial balance and to eliminate segregation in the Buffalo Schools?

A. It contained a proposal for that, yes.

Q. Did that come before the Board?

A. Yes, it did. It was discussed and then it came before the Board formally.

Q. All right, and approximately when did it come before the Board?

A. It was discussed from the time it was received late in November and probably came before us at a conference meeting in early December and then in mid-December it was on the agenda for action at a Board meeting.

Q. This is mid-December of '72?

A. Yes, sir.

Q. And what action was taken?

A. The Board by a vote of four to three, the same four and the same three, voted to receive and file Dr. Grenda's report and to advise the Commissioner that the Board did not find in the report any basis for a solution of the problem before it. I am paraphrasing those but they are pretty close to the original words.

Q. And this was the same four in the majority who had voted not to comply with the directive, which vote was taken at the March 22, '72 meeting?

A. Yes, sir.

Q. And that majority voted in favor of a motion to receive and file, is that correct?

A. Yes, sir.

Q. And you told us previously that on the Board of Education that a motion to receive and file is tantamount to a motion to reject the proposal, is that correct?

A. That is the practical effect.

Q. Just so we may bring things up to date, through law the Board of Education of the City of Buffalo was changed to become an elected School Board as of July 1, 1974, is that correct?

A. Yes, sir.

Q. And can you recall the approximate date that the elections for the School Board were conducted?

A. First week of May of 1974.

Q. And the terms of the incumbents of the appointed Board, including yourself, came to an end as of June 30, 1974?

A. Yes,sir.

Q. And there are presently, - there is presently a newly constituted Board of Education, is that correct?

A. Yes, sir.

Q. Now, if I may for a moment, your Honor, I am just about finished with the witness. I direct the Court's attention to Item 137 on Page 43 of the Stipulation,

as follows, "The Commissioner is aware that the Buffal
Board will continue to do nothing to enforce the order of February 15, 1965 through June 30, 1974 when an elected Board took office. The Commissioner has no evidence that the newly-elected Board has complied or is planning to comply with the order". You may inquire.

THE COURT: I think that the best plan, unless there is some preliminary here, that we recess until tomorrow and we undertake cross examination of Mr. Gardner. Are there any documents that you need or anything? I know we have marked so many things, but can you think of anything else, Mrs. Coon? Is there anything you would like to have? Sometimes you may think the witness may have some material which is not available which you would like to have him bring tomorrow.

MRS. COON: I am going to question him on materials we have here, your Honor.

MR. GRIFFIN: I might say on that subject that I intend to offer into evidence most of this exhange, these items that have been referred to that have been marked and quoted at some length, and also I notice even Exhibit 1 has not been officially entered into evidence.

THE COURT: I would think, Mr. Griffin, for understanding by anyone, it appears to me that someone who is familiar with distances, - I don't know, maybe this will be covered. Maybe this is in your plan. Also there are things like certain areas there which, - well, the State Teachers area and Delaware Park are just empty and there is no school district there. Other areas, for example, the area roughly between School 28 and School 33 and the area generally south of 34 we know is an industrial area and it may be helpful for someone to just explain those things.

MR. GRIFFIN: Well, I am glad the Court mentioned that. We do intend to offer and it would probably have been smoother if we had it here today, the census tracts for the years '50, '60 and '70, which will show the population.

THE COURT: I see.

MR. GRIFFIN: Including the numbers of whites and blacks in these neighborhoods. Now, relative to the distances we will address ourselves to that, your Honor, because I think that is pertinent and, frankly, I am not so sure we had that lined up in our proof but if we can get, - it seems it would be easy to get a map in evidence which will have a distance scale on it and then through measurement, one can determine the distance between points.

THE COURT: I think too that it seems to me this would be something that you would be ready to have somebody testify about. Living in the City here we all know there are certain natural and other manmade, really insurmountable boundaries here. For example, various streams, some places where there are bridges and other places where there are not and also in many areas of the City there are many railroad tracks or superhighways in some places which prevent access from one area to another, but I know this is a long trial and there will be many points covered, but these are some things I was looking at.

MR. GRIFFIN: I am frank to say we had not considered that sort of evidence.

THE COURT: Maybe that is something should wait.

MR. GRIFFIN: I am also wondering as to its relevancy.

THE COURT: All right. Maybe I am jumping way ahead.

MR. GRIFFIN: But we will certainly consider it as to whether there is anything there.

THE COURT: Thank you, Mr. Gardner. We will see you tomorrow. We will be in recess.

(Recess taken at 4:35 p.m.)

* * * * * * * *

PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 10:05 A.M.

(Plaintiffs' Exhibits 265 through 270 were marked for identification.)

ARNOLD B. GARDNER, called as a witness on behalf of the Plaintiff, and having been previously duly sworn, resumed and testified further as follows:

THE COURT: Mr. Griffin?

MR. GRIFFIN: May it please the Court, we have placed upon the board Exhibit 39, relative to the optional areas, which will later be identified and offered in evidence, but it has been placed on the board for convenience. Also, yesterday, the Court raised the question of distances, and we notice that at the bottom of the map there is a scale - - I am referring to Exhibit 1 - - and the scale makes reference, although it is not completely clear but from the other exhibit that was used for the blow-up, to one inch equaling eight hundred feet, and if you measure with the ruler, as we have done, on the scale, you will find that one inch does equal this. So if that could be established for the record, there is a way to measure distances on this map, and there is a scale on it which I was unaware of yesterday. There are just two or three additional items of direct, in going over things, that I would like to further complete with Mr. Gardner before cross, your Honor.

THE COURT: All right. Go ahead, Mr. Griffin.

DIRECT EXAMINATION BY MR. GRIFFIN (Cont'd.):

Q Mr. Gardner, we had brought things down through some period in 1973, when I believe a Mr. Grenda from the State Education Department came and made some investigation, and a report was submitted and received and filed by the Board. Do you recall that yesterday?

A Yes, sir, at the end of 1972, I believe.

Q Excuse me, at the end of 1972. Now, was there any further meetings with representatives of the Commissioner's office, any further communications back and forth relative to progress in Buffalo and complying with this directive after that time?

A Sometime in the early months, or perhaps in the early spring of 1973, the Board received a request from Deputy Commissioner of Education Sheldon, asking that the Board meet with him to review the matter further, and my recollection is that the Board considered the matter at a meeting and voted four to three, and the same persons, as we discussed yesterday, in the majority and minority, to advise Mr. Sheldon that while the Board would be willing to meet with him as a matter of courtesy, if he intended to pursue an involuntary busing program as the means of achieving racial integration in the Buffalo Schools, there would be no point in such a meeting.

Q I direct your attention to Exhibit 267, which is a letter from Joseph E. Murphy, President of the Board of Education, to Mr. Sheldon, Deputy Commissioner.

A Yes, sir.

Q And Mr. Murphy succeeded you as president of the Board of Education?

A Yes.

Q When was that?

A May of 1972.

Q And that communication of January, 1973, to Mr. Sheldon, was that the outcome of the meeting and the vote that you discussed?

A Yes, sir, that is correct.

Q Would you read the last paragraph of that letter for us?

A "Be assured we would be pleased to have you visit here. However, if your discussion with us should, in any way, involve forced busing, then, in view of the attitudes of the majority of the Board, there would be no point in such a discussion." I should comment, as I look at the letter, that Mr. Parlatto had left the Board as of January 1, 1973, and Mr. Tauriello had taken his place. I have forgotten the exact date, but it is indicated by the names of the members of the Board appearing on the letterhead.

Q What is Mr. Tauriello's full name?

A. Anthony F. Tauriello.

Q He was appointed to replace Mr. Carmelo Parlatto, is that correct?

A. Yes.

Q You made reference to a vote at a meeting relative to seeing the Commissioner again, and you made reference to the majority, was Mr. Tauriello among that majority?

A. Yes, sir, Mr. Tauriello voted among the majority.

Q Now, did any meeting take place?

A. I believe that a meeting finally did take place with Mr. Sheldon at a later date.

Q All right. And can you tell us what occurred at that meeting?

A. My recollection is that we met with Mr. Sheldon, and discussed the proposed report of Mr. Grenda, and the plan that the State Education Department Group had presented, and that matters were left after that meeting as they had been previous to that meeting.

Q Was there any further meeting with representatives of the Commissioner or representatives of the Board of Regents within the past year?

A. Yes, sir, there was.

Q When was that?

A. Sometime in the latter part of 1973 - - there was a series of meetings - - sometime in the latter part of 1973 a meeting took place between Regent Genrich, who has recently been appointed from this area.

Q Regent Genrich?

A. Yes, sir.

Q Is that Mr. Willard Genrich, who was appointed to the Defendant Board of Regents within the past year or so?

A. Yes, sir.

Q He is from the Western New York area, the Town of Amherst?

A. The Town of Amherst, yes, sir. Regent Genrich met, I believe, in Buffalo with Deputy Commissioner Sheldon and with Dr. Gajewski, who was then the president of the Board of Education.

Q Were you present at that meeting?

A. No, I was not.

Q Were you present at any future meeting wherein the Genrich-Sheldon-Gajewski meeting was the subject of discussion?

A Yes, some period of time after that meeting had taken place, Dr. Gajewski called a caucus, a conference meeting of the members of the Board of Education and the Superintendent, preceding a regular Board meeting.

Q Can you tell us approximately when that was?

A I would say it was late in September or early October, 1973, in that period of time, I believe probably during September, and at that conference, Dr. Gajewski advised us that he had participated in the meeting that I have described, and told us that he had not advised anybody previously, at the request of Mr. Genrich, that the purpose of the meeting with Mr. Genrich and the Commissioner had been to explore possible means through which the Board might achieve some movement on the integration question, because Dr. Gajewski advised us, he stated to us that Mr. Sheldon - - that a report was anticipated from the Commissioner's office shortly, directing certain serious action against the Board of Education, and he was anxious to forestall that.

Q What came of that meeting of the Board?

A Dr. Gajewski stated that the purpose of his telling us was to ask if the Board members would be willing to meet with Regent Genrich and Deputy Commissioner Sheldon in a private meeting, at a place other than the Board office, to discuss the situation.

Q Did that occur?

A Yes, sir, that meeting took place.

Q When was that meeting?

A I would believe sometime in October of 1973. If not October, in November, but in the last months of 1973.

Q Were Board members present?

A To my recollection, all Board members were present.

Q Who was present from the Commissioner's office?

A Deputy Commissioner Sheldon.

Q Was Regent Genrich present?

A Yes, he was.

Q What was the general subject of the discussion?

A The subject of discussion was whether the Board would reconsider the position previously taken, that it was unwilling to respond to the Commissioner's directive of January, 1972, and whether the Board would move toward any new integration program. That was the subject.

Q What was the resolution of the matter?

A. Well, the meeting, from the standpoint of achieving any change in position or a new movement by the Board from its previous position, was totally unsuccessful. We spent some two or three hours together, and everybody repeated the position he had previously taken. Dr. Sheldon indicated that the Commissioner had gone about as far as he could possibly go, that he was going to have to, and in the near future, would be issuing a formal order directing the Board to do - - or to proceed in some fashion with some mandate in it, whatever it may be he did not tell us that, and Regent Genrich said that he called the meeting in order to prevent that order from issuing, in the hopes that members of the Board might be willing to take some position which would move forward with the integration of the Buffalo Public Schools. Dr. Sheldon said that the action of the Board did not necessarily have to be that which the Commissioner had originally requested in January of 1972. It did not have to be necessarily that which was contained in the Grenda report, and it did not necessarily have to follow any particular pattern, but that it had to demonstrate a new willingness on the part of the Board to move forward and to achieve some measure of increased integration of the schools in a reasonable time and in a reasonable fashion. The members of the Board all spoke at that meeting, and it became clear that there were still four members of the Board who were unwilling to adopt any new program. A number of - - as I recall it, we presented - - When I say "we", I did, Dr. Blackman did, Mrs. Baugh, who had joined the Board by that time, presented a variety of proposals of the kind we had presented back in - - that the minority had presented back in 1972, involving steps short of a total duplication of the racial balance of a district in every school. The other members of the Board who were present, Mr. Murphy, Dr. Gajewski, particularly, as I recall, explained why they thought our proposals were unworkable and offered no basis for meaningful discussion. The meeting was totally unsuccessful. It generated into some acrimony on a few occasions. Regent Genrich tried to control it, as best he could, and I guess we maintained order, but there was no progress at all. The meeting would have ended in really a shambles, except finally we concluded that it was too serious a matter to abandon in that fashion, and agreed to meet again. I had a discussion with Deputy Commissioner Sheldon as the meeting ended, and I told him that I thought it was a farce, he agreed, and he said he didn't see that anything would come from it, but he did not feel that they could let this final stone unturned. [I spoke to him rather sharply that the Commissioner had let far too much time pass, that although I have high personal regard for Dr. Nyquist, I felt the whole situation had degenerated because of the passage of time, and that the State Commission was operating really as the boy who threw the brick and ran.] We adjourned and agreed to meet again.

Q This meeting that you have described, attended by Deputy Commissioner Sheldon, members of the Board, and informally chaired by Regent Genrich, was sometime in October of 1973?

A Approximately that, yes, sir.

Q At that time, there was no indication by the majority of the Board of a willingness to move forward in any respect, is that correct?

A That is correct.

Q Now, you said that as you left, you had a conversation with Deputy Commissioner Sheldon or the group in effect agreed to try to meet again, is that right?

A Yes, sir.

Q Was there another meeting?

A There was a meeting sometime early in 1974, which was called on either one or two days notice, and conflicted with commitments that a variety of other people had, that all the members, save two or three, had and that meeting I am informed took place. I did not attend it, but I am informed that two or three members of the Board did attend it, but I did not attend it.

Q Now, there was reference to the fact that near the end of 1973, in September or thereabouts, there was an indication, you mentioned Dr. Gajewski made reference to it and others at the meeting, that the Commissioner was about to come down with some order or mandate or take some steps to do something about the Buffalo situation, is that correct?

A Yes, sir.

Q To your knowledge, has that been done to this date?

A It has not.

Q Mr. Gardner, you identified Exhibit 267 as being a letter of the president of the Board, Joseph Murphy, of January 10, 1973, to Deputy Commissioner Sheldon. I direct your attention to Exhibits 268 and 269, and ask you whether 268 is a copy of a letter of January 13, 1973, from you to Deputy Commissioner Sheldon, and if 269 is a letter from Deputy Commissioner Sheldon to you, dated January 17, 1973, pertaining to the Buffalo progress?

A Yes, sir, that is correct. That is what those letters are.

Q Did you advise Dr. Thomas Sheldon, the Deputy Commissioner, in Exhibit 268, of January 13, 1973, that you had received a copy of Mr. Murphy's letter that made reference to the fact that they would meet, but if any discussion of busing was to occur, it would be fruitless?

A Yes, sir.

Q All right. Did you say in Paragraph 3, "Mr. Murphy's letter is phrased in terms of busing, but to be realistic, what he is saying to you is that the Board majority, as presently constituted, has no interest in talking about school desegregation, regardless of the manner in which it might be accomplished."?

A. Yes, sir, I said that.

Q. Was that true, to the best of your knowledge, at the time it was said?

A. I believed it to be then. I believe today that it was true then.

Q. Now, you then received a reply to that letter, which is Exhibit 269, and the reply from Deputy Commissioner Sheldon is January 17, 1973, is that correct?

A. Yes, sir, it is.

Q. And does he say in the second paragraph, and I quote, "I am sure you are quite right and that we have practically exhausted our resources with respect to this matter."?

A. Yes, sir, he said that.

Q. I direct your attention to Exhibits 265 and 266; 265 being a copy of a letter of October 3, 1973, to Commissioner Nyquist, with a copy to Dr. Joseph Manch, and Exhibit 266, a reply from Commissioner Nyquist, dated October 11, 1973, is that correct?

A Yes, sir.

THE COURT: Are these letters from Mr. Gardner?

BY MR. GRIFFIN:

Q Exhibit 265 is a letter from you, is that correct?

A Yes.

Q To Commissioner Nyquist?

A Yes, sir.

Q And Exhibit 266, October 11, 1973, is a reply from Commissioner Nyquist addressed to you, is that correct?

A Yes, sir.

Q Now, do you again point out to the Commissioner that time continues to go by and that nothing has been done?

A Yes, I do, in the letter.

Q Do you say in your letter of October 3, 1973, to Commissioner Nyquist, in the second paragraph, "When he was here - - making reference to Deputy Sheldon - - I expressed my disappointment in the lack of progress from your office with regard to the desegregation of the Buffalo Public Schools."?

A Yes, sir, I make that statement.

Q In the reply of October 11, 1973, from Commissioner Nyquist, Exhibit 266, does he state in the third paragraph, "I was as disappointed as you at our inability to get the Board to consider a reasonable approach to integrating the schools."?

A Yes, sir, he says that.

Q Mr. Gardner, I direct your attention to Exhibit 270, which is a large volume entitled A Plan for Middle Schools, Buffalo, New York, by Max Wolfe and Annie Stein, Center for Urban Education, March, 1970.

A Yes, sir.

Q Would you tell us what that is?

A This is a report which the Board ordered, with the cooperation of the State Education Department, from an organization known as the Center for Urban Education, which proposed a plan for middle schools in the City of Buffalo, primarily for the purpose of achieving integration.

Q Now, did that report come before the Board?

A The report came before the Board first as it is here, and then it was presented to the Board by Dr. Wolfe, who came from New York to do so, sometime, I believe in the fall of 1970. In 1970, I know for sure.

Q And what action, if any, was taken with respect to the proposals for aiding and achieving integration expressed through that exhibit?

A. The Board discussed the exhibit with Dr. Wolfe, and we had several hours of dialogue when he came to present it, and it never again came back to the Board for attention or action.

Q Now, lastly, Mr. Gardner, was there, during the time of your membership on the Board, a proposal to construct a new east side school?

A. Yes, sir, there was.

Q What type of school was that, where was it to be constructed?

A. That was to be a general comprehensive high school, that is, to offer both academic and vocational subjects, Grades 9 through 12. It was to be located on the eastern side of the city, and had been in planning for more than five years before I joined the Board. Its primary purpose was to relieve - - was to provide additional high school facilities for programs that might not have been offered previously, but to relieve overcrowding at some of the high schools in the eastern part of tha city, specifically, Kensington and South Park High Schools. Later, it was agreed by the Board that it would also serve the purpose of redistricting the East High School, so that some measure of race balance or integration could be achieved there, as well as correcting the overcrowding at Kensington and South Park.

Q This would be a new general high school for Grades 9 through 12?

A Yes, sir.

Q The Board would have the opportunity to draw students from various areas to go to that school, correct?

A Yes, sir.

Q Now, was there ultimately a Board determination as to where the school was to be located?

A Yes, sir, there was. The Board, after much looking, selected a site known as 1400 William Street.

Q Now, orienting ourselves on Exhibit 1, 1400 William Street would be in the vicinity of what major landmark or street, can you tell us?

A Your Honor, may I go over there?

THE COURT: Certainly.

THE WITNESS: It's right about here.

THE COURT: Why don't you put your initials there.

(Witness marks exhibit.)

BY MR. GRIFFIN:

Q So that the record may be clear, Mr. Gardner, on Exhibit 1 you have just marked a small box with an X in it and put your initials AG in an area where you see Penn Central Tracks on William Street in the bottom right-hand corner approximately of the School 57 area, is that correct?

A Yes, sir, I think that is the accurate location. The map is a little hard to work with. I am intending to convey a site which is several hundred feet to the east of the post office building, which is just to the west of the Penn Central Railroad viaduct or William Street, which is known as 1400 William Street.

Q Now, this site is in a predominantly white community, is that not true?

A Yes, sir, that is correct.

Q Now - -

A It is largely an industrial community.

THE COURT: Mr. Griffin, I don't like to interrupt you on the record, but I think, Mr. Gardner, that the residences to the north are mainly white, but there is much industry and railroad activity and other commercial enterprises also?

THE WITNESS: And that - -

MR. GRIFFIN: I think we can agree to that, generally, between Bailey and Fillmore and William, yes.

THE WITNESS: That was one of the problems in finding a location in that part of the city. Most of the sites were heavily industrialized, and so greater care went into this site. We went on tours with the Common Council by bus on several occasions. We had the Community Advisory Group that selected that site with us. There is no site that has ever been selected for a school in Buffalo that was more carefully worked over, maybe reluctantly accepted, because it is industrial as well as residential, but there has never been a site more carefully worked over before selection than this one. Ten years of it.

BY MR. GRIFFIN:

Q Now, is it going to be built?

A No, sir, it is not.

Q Why not?

A The land was acquired - -

THE COURT: Excuse me. Can you get back to the date, what year we are in now?

THE WITNESS: Yes, your Honor. The Board suggested - -

THE COURT: Do you remember when this suggestion was made by the Board?

THE WITNESS: If I may refer - -

THE COURT: Is that in the stipulation?

MR. GRIFFIN: No, it is not, your Honor. Unfortunately, we do not have a precise date. Do you have something in your records?

THE WITNESS: I think I may have something in my file that would help me on this.

MR. GRIFFIN: While Mr. Gardner is doing this, I can expedite the offer into evidence of some exhibits, perhaps, your Honor. At this time, I offer in evidence Exhibit 102, which is the December 13, 1971 letter to Commissioner Nyquist from Messrs. Goldfarb, Williams and Dubard.

THE COURT: Any objection? No objection, 102 shall be marked in evidence. Mr. Walsh will take care of these.

MR. GRIFFIN: Exhibit 103, which is Commissioner Nyquist's letter to the Board, January 20, 1972.

THE COURT: No objection, it may be admitted.

MR. GRIFFIN: Exhibit 104, Mr. Gardner's letter to Commissioner Nyquist, February 15, 1972.

THE COURT: No objection, admitted.

MR. GRIFFIN: Exhibit 105, a transcript of a press conference of February 21, 1972, with Commissioner Nyquist.

THE COURT: No objection, admitted.

MR. GRIFFIN: Exhibit 105A, a transcript of portions of Board meeting of February 1, 1972.

THE COURT: No objection, admitted.

MR. GRIFFIN: Exhibit 106, a study of desegregation, pink cover, February 22, 1972, identified as the Heck Plan.

THE COURT: No objection, admitted in evidence.

MR. GRIFFIN: Exhibit 107, March 22, 1972, transcript of Board minutes.

THE COURT: No objection, admitted.

MR. GRIFFIN: Exhibit 108, March 23, 1972, communication from Assistant Secretary Mazur of Board to Dr. Manch, attaching copy of letter to

Commissioner Nyquist.

THE COURT: No objection, received.

MR. GRIFFIN: Exhibit 109, March 28, 1972, a letter to the Board from Mr. Nyquist.

THE COURT: Admitted.

MR. GRIFFIN: Exhibit 111, March 28, 1972, a communication from Assistant Secretary Mazur to Dr. Manch.

THE COURT: Exhibit 110, is that pertinent? I don't think you mentioned it.

MR. GRIFFIN: Yes, I did skip it. Let's see why. Yes, 110 is very pertinent.

THE COURT: The letter of March 29th?

MR. GRIFFIN: Yes. Thank you, your Honor. I intended also to offer 110 in the proper sequence, 110 being a letter of March 29, 1972 to Commissioner Nyquist from Mr. Gardner.

THE COURT: Received.

MR. GRIFFIN: 112, a letter from Commissioner Nyquist to Mr. Gardner, April 6, 1972.

THE COURT: Admitted in evidence.

MR. GRIFFIN: 111 was identified.

THE COURT: Yes.

MR. GRIFFIN: 113 is a letter of May 15, 1972, to Dr. Joseph Manch from Thomas Sheldon.

THE COURT: Admitted.

MR. GREGORY: I don't think that particular exhibit was ever identified.

THE COURT: I think maybe you are right. May 15th.

MR. GRIFFIN: I will be glad to do that for the record.

BY MR. GRIFFIN:

Q Mr. Gardner, showing you Exhibit 113 for identification, is this a communication from Thomas D. Sheldon to Dr. Joseph Manch, Superintendent, May 15, 1972, relative to Mr. Ted Grenda of the State Education Department coming to Buffalo on May 22, 1972?

A. That is what the letter appears to be. I must say I hadn't seen it before. Yes, I know such arrangements described in the letter were being made. It appears to be what you say.

MR. GRIFFIN: All right.

THE COURT: All right, received in evidence.

MR. GRIFFIN: Exhibit 265, letter from Mr. Gardner to Commissioner Nyquist of October 3, 1973.

THE COURT: This is a new exhibit?

MR. GRIFFIN: These were just identified this morning.

THE COURT: 265, what is it?

MR. GRIFFIN: A letter of October 3, 1973, from Mr. Gardner to Commissioner Nyquist.

THE COURT: It may be admitted.

MR. GRIFFIN: 266, which is a letter from Commissioner Nyquist to Mr. Gardner, October 11, 1973.

THE COURT: Admitted.

MR. GRIFFIN: 267, letter of Joseph Murphy to Dr. Thomas Sheldon, January 10, 1973.

THE COURT: Marked in evidence.

MR. GRIFFIN: 268, a letter of January 13, 1973, from Mr. Gardner to Dr. Sheldon.

THE COURT: Received.

MR. GRIFFIN: 269, a letter of January 17, 1973, from Mr. Sheldon to Mr. Gardner.

THE COURT: Received.

MR. GRIFFIN: Lastly, 270, the plan for middle schools of March 1970.

THE COURT: Received.

(Plaintiffs' Exhibits 102 through 113, and Plaintiffs' Exhibits 265 through 270, previously marked for identification, were received and marked in evidence.)

BY MR. GRIFFIN:

Q Have you found something that refreshes your recollection relative to the date that the final site was selected by the Board on William Street for this new Eastside High School?

A Well, I found something which is helpful. It doesn't answer the question entirely, but I found something that enables me to say this, and I am sure that this is all a matter of official record in the Board files, if I am incorrect, it can be checked, but I think the chronology is this. The Board finally selected a site sometime and requested - - selected a site in 1971, and requested the City to acquire the land, as is the practice. Apparently, the first action to acquire the land was taken in 1971, in fiscal '71-'72. There was further acquisition, because there were multiple parcels, in 1973-73 fiscal year, I believe, and the first construction money or money for the design, architectural and beginning of the project was appropriated in 1973-74. That was several millions of dollars that were authorized in the City capital budget for the issuance of bonds for this project.

Q But it is not being built?

A No, sir.

Q Why?

A Because the project was abandoned by the City in the 1974-75 budget year.

Q What were the expressed - - Strike that. What is the cause of that that it is not being built?

A The assigned cause in the Mayor's capital budget message to the Council was the fiscal crisis of the City.

Q Are there other reasons that you are familiar with that surfaced relative to resistance to having an integrated school at that site?

A There was very considerable discussion of that at a meeting of the Board of Education after the capital budget became known to us, after the fact the project was being abandoned became known. It was a complete surprise. The Mayor hadn't discussed it with the Board of Education, although the Board of Education had been working on this project, as I have said, for some ten years, and the Mayor's office had been actively involved in it previously. The first we learned of itwas when the budget message was issued, although the Mayor had called the President of the Board down to tell him several days before, but we had not learned of it.

THE COURT: I don't know whether it matters, but you talk about the budget message. Now, when would that be, when was that issued, Mr. Gardner, if you recall?

THE WITNESS: I believe in April of this year, your Honor.

THE COURT: April of 1974?

THE WITNESS: Yes, sir. Well, in the spring of '74, yes, sir.

THE COURT: All right. I am trying to get the year. There is a certain sequence that follows every year. So that sometime in the spring - - but it was the spring of 1974, not '73?

THE WITNESS: That is correct, your Honor. The program had been included in the 1973-74 fiscal year for funding. There was several millions of dollars appropriated in the 1973-74 capital budget for this purpose. It was when we got to the 1974-75 capital budge, which the Mayor submitted to the Common Council in the spring of 1974, that the project was abandoned. The Mayor included in his capital budge a paragraph describing the abandonment of this facility and its replacement with a recreational facility at that location.

BY MR. GRIFFIN:

Q At the time this occurred and prior to the time it occurred, was there citizen resistance and pressure to having this school there?

A There was -- The group in the immediate -- The citizens group which represented the population in the immediate vicinity of the school was very active in favor of the school, in the immediate vicinity of the school. There was pressure presented from time to time from other citizen groups in the eastern part of the City in opposition to the program, yes. The nature of the opposition related primarily to the fact that there would be a redistricting of four high schools, including the Eastside High School after the construction of the building; Kensington, East, South Park, and the Eastside High School would all have new districts in some fashion, and there was very considerable apprehension described at Board meetings rather forcefully about the introduction of black students into certain areas in which they were not then present as students.

Q Was that resistance an expressed citizen concern associated with the fact that this school is not going to be built?

A Personally, I am entirely satisfied that that is the motivating force for the nonconstruction of the school. The City does have a fiscal problem, but the way the money was going to be provided by the City over a period of many years was geared to accommodate the City's financial problem, I can't ignore that. But after the project was abandoned, we had a Board meeting at which we really interrogated, at great length, the Chairman of the Community Advisory Group for the Eastside High School. We particularly dwelt on the racial aspect of it, and I was satisfied, and other members had expressed their satisfaction, that the principal reason for the abandonment of this project was racial. I am not saying it is the only reason, there were fiscal reasons. I am satisfied the principal reason was the one I described.

MR. GRIFFIN: You may inquire.

THE COURT: Mrs. Coon, do you want to go

ahead right away, or do you want to take a short break?

MRS. COON: Take a short break, your Honor.

THE COURT: Very well. We will take a short recess.

(Thereupon, the court was in recess at 10:55 a.m.)

(PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 11:10 A.M.)

ARNOLD B. GARDNER, called as a witness on behalf of the Plaintiffs, and having been previously duly sworn, resumed and testified further as follows:

THE COURT: Mrs. Coon, perhaps on another occasion I have met the gentleman at the table assisting you, but - -

MRS. COON: Mr. Eugene Panfil, Assistant Attorney General.

THE COURT: Fine. Mr. Panfil, nice seeing you.

MRS. COON: I won't be able to be here for the whole trial, Mr. Panfil will be taking over for me.

CROSS EXAMINATION BY MRS. COON:

Q Mr. Gardner, at the beginning of your testimony yesterday, you were asked about directives from the Commissioner of Education which affected school district operations?

A Yes, ma'am.

Q And, for example, you mentioned the one hundred eighty day school year, and certain subjects which were required to be taught in the curriculum, and school funding, and as a lawyer, I would assume you are aware that all of these examples are founded in statute?

A Yes, I am, Mrs. Coon.

Q Can you think of any examples in answer to that question which are not based on the statutory powers of the Commissioner?

A I suppose that everything the Commissioner does is based upon some statutory delegation of authority. He issues many regulations and rules that are not statutory, but under cover of statutory authority granted to him under cover of the authority granted to the Board of Regents and delegated by them to him, whichever it may be.

Q So then he does not have a general plenary power over education which is not a specified statutory delegation of power?

A I would use the statutory delegation as being extraordinarily broad and, to that extent, plenary, but I leave that to the educational experts.

Q You were asked about Plaintiffs' Exhibit 110, which you described as, in effect, a minority report, and it was your letter to Commissioner Nyquist in March 1972 - - Was that the first time that you had ever sent such a minority report to the Commissioner or to advise him of what was going on in the Board?

A Yes, I believe it was.

Q What prompted this action at that time?

A Well, I explained in - - I think I explained in answer to Mr. Griffin's question that I was so totally frustrated, disappointed and truthfully distressed by the circumstances of not only the action of the Board, but the circumstances of the meeting at which that action took place, that I felt it was necessary to present the other side of the case to the Commissioner.

Q Now, you first came on the Board in 1969, which was five years after the Commissioner's decision in Yerby Dixon, is that correct?

A. Yes, ma'am.

Q Then you have no personal recollection of the dealings between the Board and the Commissioner between 1965 and 1969?

A. I do not.

Q I believe in the deposition and your testimony yesterday, you said you were made aware of the outstanding order and some of the material behind it?

A. Yes. When I - - as I said, when I went on the Board, I was furnished with considerable material and this was a subject - - Yerby Dixon and the integration of schools - - was a subject of concern and interest to me. I reviewed some of the official records from the files of the Board, and discussed the subject with the then Director of Integration and with other staff members. I made myself aware of it.

Q Now, there had been between 1965 and 1969, several communications and reports involving school integration in the City of Buffalo, is that not correct?

A That is correct.

Q Did you familiarize yourself with those?

A At that time, I did, certainly, in general terms.

Q Now, I would assume that your first contact, as a memberof the Board, a direct contact with these reports, would have been a progress report submitted by the Board of Education to the Commissioner of Education in June of 1969, would that be correct?

A Yes, I believe that at my deposition we talked about that.

Q This report is attached as Item 32 to the Commissioner's answer to the Plaintiffs' interrogatories, and I would ask you if you would recognize that report?

THE COURT: Is this also an exhibit in the case?

MRS. COON: The answers to the Commissioner's interrogatories I believe have been filed with the Court. It is not a present exhibit.

THE WITNESS: Well, it is not dated, but it appears to be a - - it is described as a progress report on accelerating quality integrated education, and I do recall the first time I came in contact at a Board meeting with it, from an action standpoint, was when a progress report was submitted to the Board for approval.

BY MRS. COON:

Q Thank you. So that at that time there were certain actions being taken by the Board or by the school districts of the City of Buffalo in order to make some attempt to comply with the Commissioner's order of 1965?

A Well - -

MR. GRIFFIN: Objection.

THE COURT: It is cross examination, overruled.

THE WITNESS: The Board was taking certain actions and some of it was described in that report. Whether I would agree it was to carry out the

Commissioner's order in the Yerby Dixon case or not is a separate item.

THE COURT: So I will be able to follow this, I think the best procedure would be, if you desire, to let us mark that as an exhibit, so we will have a number on it and we can refer to it, otherwise, it is most unwieldy if we have to plow through exhibits and answers to interrogatories and other material.

THE CLERK: Shall I mark it as a Defendants' exhibit, your Honor?

THE COURT: Give it an exhibit number, let us not get into defendants' and plaintiffs'. Call it Exhibit 271.

(Thereupon, document referred to was marked Plaintiffs' Exhibit 271 for identification.)

THE COURT: What is the description of this paper?

MRS. COON: It is a progress report submitted on - - it is a progress report on, I believe, it is achieving quality integration in the schools.

THE COURT: Is this prepared by the Regents?

MRS. COON: It is prepared by the Board of Education of the City of Buffalo.

THE COURT: Is there a date?

MRS. COON: No, it is undated. It would be sometime in June of 1969.

MR. GRIFFIN: Could I ask how you would know it was June of 1969 if it is undated?

MRS. COON: I have a letter of June 18, 1969, which refers to it. Could we have this marked?

(Thereupon, letter referred to was marked Plaintiffs' Exhibit 272 for identification.)

BY MRS. COON:

Q Mr. Gardner, on June 18, 1969, Commissioner Nyquist wrote to the then president of the Board of Education, Dr. Gajewski, in relation to the report which I just showed you. Do you remember hearing about this communication, was any mention made of it at the Board meeting?

A I may have seen this before. Reading it hastily, it sounds generally familiar. I have no reason to doubt it was actually sent or received, of course.

Q Thank you. This letter lists - -

A I had just been on the Board for a period of about a month at that point.

Q This letter summarizes the report, which I just showed you, and then refers to future action which the Board should take in relation to integration, is that not so?

A Well, I think it summarizes - - as I looked at it hastily, it seems to summarize the report and then comment upon conditions which continue to exist in Buffalo, and ask for a further report within a month. I don't know if it directs or suggests anything in particular.

Q All right. The letter concludes, does it not, by saying "In light of the foregoing considerations, I ask that you let me know your plans for forward motion in the 1969-70 school year, and ask for that reply within a month."?

A. Yes, ma'am.

Q This letter also refers to Chapter 342 of the Laws of 1969, which has been referred to in testimony yesterday. Now, you arrived on the Board of Education about the same time that Chapter 342 was enacted, is that not correct?

A. More or less, I suppose, yes.

THE COURT: This is the elected vs. the appointed School Board?

MRS. COON: Right.

THE WITNESS: As I understand the question, your Honor, this is the bill that made it illegal, said that appointed School Boards could not establish racial assignments of pupils.

THE COURT: I stated it inartfully.

MRS. COON: The statute which was in issue in the Lee case.

THE WITNESS: I wanted to make sure that I am referring to the same thing that Mrs. Coon is.

BY MRS. COON:

Q Now, this particular letter of Commissioner Nyquist in June of 1969 refers to Chapter 342, and points out that it does not prohibit voluntary transfers of students for the purpose of integration, is that not correct?

A I glanced at the letter quickly. If that is what you say, I am sure it does.

MRS. COON: At this point, I would like to offer these two exhibits in evidence.

THE COURT: This is 271 and 272?

MRS. COON: Right.

MR. GRIFFIN: I have no objection on the basis that these were materials exchanged and are properly part of the record. I object to cross examination on the contents.

THE COURT: Mark 271 and 272 in evidence.

(Thereupon, Plaintiffs' Exhibits 271 and 272, previously marked for identification, were received and marked in evidence.)

MRS. COON: Will you mark this, please?

(Thereupon, letter referred to was marked Plaintiffs' Exhibit 273 for identification.)

BY MRS. COON:

Q Mr. Gardner, I show you a letter marked as Exhibit 273, dated June 4, 1969, from Anthony Manguso, Corporation Counsel of the City of Buffalo, to Dr. Joseph Manch, Superintendent of Schools. Was that letter ever brought before the Board or discussed?

A Yes, I recall this letter, Mrs. Coon.

Q Would you describe generally what that letter discusses, what it advises Dr. Manch?

A In general, the letter discusses Chapter 342 of the Laws of 1969, and discusses how the Board might continue with its out-busing program, if we can call it that, the transportation of black children from the center of the City into peripheral white schools, in compliance with the provisions of that law, and Judge Manguso provided his recommendations as to how that could be done, in essence, by parental request rather than school assignment.

Q Did the Board take any action on this recommendation or this letter, the material contained in the letter?

A I don't recall if the Board took formal action. I know that the Board was aware that the parental request was - - that the method was going to be employed, and I know it was, in fact, employed. Whether the Board acted on it formally, I don't know.

MRS. COON: I would ask that Exhibit 273 be received in evidence.

MR. GRIFFIN: Received on the same basis.

THE COURT: Yes. Mark 273 in evidence.

(Thereupon, the Plaintiffs' Exhibit 273, previously marked for identification, was received and marked in evidence.)

MRS. COON: Would you please mark that?

(Thereupon, letter referred to was marked Plaintiffs' Exhibit 274 for identification.)

BY MRS. COON:

Q Mr. Gardner, you will remember, with reference to the Commissioner's letter of June 18, 1969, Exhibit 272, which you previously discussed, that the Commissioner asked for a report within one month on actions that would be taken in the 1969-70 school year, is that correct?

A I recall that, yes.

Q I show you Government's Exhibit 274 for identification, a letter from Dr. Manch, and the President of the Board to Commissioner Nyquist, which purports to be a report as requestod in the June 18th letter. Were you present at any Board meeting when that was discussed?

A Yes, I believe I was. I see the letter - - the exhibit refers to a resolution adopted by the Board, that the Superintendent be instructed to explore cooperation with suburban school districts to achieve racial balance. I recall the discussion of that at the Board meeting, yes.

Q That report which was submitted also itemizes three or four actions, I believe, intended to be taken in the 1969-70 school year?

A. Yes. I am not commenting in any way upon what is said. It does say there were things that were supposedly going to be done.

Q. One of the proposed actions, which would provide more integration, was the opening of the Wes[illegible]el Middle School in September of 1969 on an integrated basis?

A. Yes, that is correct. That was the one middle school that we did succeed in constructing.

Q. It was then proposed what then existed as the voluntary busing plan would be continued?

A. Yes.

Q. Which would be a voluntary plan in compliance with Chapter 342, which was then still a viable act of legislation?

A. Yes.

Q. The report also refers to the decision of the Appellate Division, which was referred to yesterday, in relation to the portable classrooms, and said that that had come down, and they would be able to use the relocateable classrooms. Were the portable classrooms used?

A. Yes, they were. They are no longer being used for the purpose for which they were constructed or purchased, and there are only a few of them left, but they were used for some years.

Q Did they have any effect upon the integration of the schools?

A I have heard it argued both ways. I am not really sure. I think in the first instance, it may have had some effect. I think that sooner than it was expected, it became - - it ceased to be a meaningful contribution to integration, largely because of population movements within the City.

Q Now, as I understand the portable classroom setup, these are leased for a period, a maximum of five years, after which the Board would own them?

A They were leased for a period of years, the Board later purchased them.

Q You say they are no longer being used?

A There are some being used. Some are no longer in existence, sold or demolished, and some are used as annexes to existing buildings. Of the eighteen original classrooms, a guess would be that there may be six or seven still in use.

MRS. COON: May I ask that Exhibit 274 be received in evidence.

MR. GRIFFIN: No objection to it on the same basis.

THE COURT: 274 may be received.

(Thereupon, Plaintiffs' Exhibit 274, previously marked for identification, was received and marked in evidence.)

THE COURT: Could I see that, please, for a minute?

MRS. COON: Yes, your Honor.

BY MRS. COON:

Q Now, the actions proposed to be taken by that report to the Commissioner were taken at a time when Chapter 342 in effect prohibited attendant zoning, and so forth, for the purposes of racial balance, is that not true?

A. May I see the letter again when your Honor is through with it, in order to answer the question?

THE COURT: 274?

THE WITNESS: Yes, sir. Thank you. That is a broad question. To answer it fairly - -

BY MRS. COON:

Q To refresh your recollection, I believe it was stated yesterday that the decision in the Lee case came down in 1970.

A I know that the Chapter was still in effect when this letter was written. My point is, you said were the actions described in here put into effect - - proposed actions proposed to be taken or were they taken while the Chapter was still in effect, and my point really was not to respond to the Chapter being in effect, but as to whether the stuff in here was for real, whether it was accurate intended to be carried out, and was indeed carried out. On that point encompassed in your question, I have some doubts.

Q The West Hertel Middle School was open?

A The West Hertel Middle School was open.

Q It was opened as an integrated school?

A Yes.

Q There was the continued voluntary busing plan?

A Yes.

Q And I believe the third point was the portable classrooms which were to be established for the purposes of integration, of transfer of pupils out of the inner city?

A. Yes. All those things have been covered in the original report that the Commissioner found unacceptable. In effect, the Board was sending them back to him, and the only thing the Board added in this letter was the reference to exploring with suburban districts, and that never happened.

Q Would you say that never happened, there was no exploration of the suburban districts?

A. I would say there was no exploration with the suburban districts.

Q I believe Dr. Manch at one time, in deposition, testified to discussions with Williamsville?

A. There was a proposal that Williamsville originated, which led to quite an upheaval in that community and it was abandoned, for the assignment of one hundred twenty-five pupils, something like that, from Buffalo into the Williamsville district, but I would say that as far as the Board of Education is concerned, either initiating or conducting the discussions with suburban school districts, as described in 274, that did not take place.

Q But there were some discussions, although nothing materialized?

A. I think that the Williamsville situation was initiated by Williamsville, by Superintendent Keller out there. I dare say he discussed - - he may have had conversations with Dr. Manch, but the Board and the Board Staff was not involved in that. He was scared to death to involve it, it turned out badly enough without involving them. He was fearful of more problems with his community attitudes, if he had involved our staff.

Q What do you have for the basis for that statement the he was scared?

A. That he was scared to bring us into it? When I say "scared", I will be specific. I have discussed this on previous occasions with Dr. Keller. He felt that - - he is a man of very good will - - he felt there was a positive learning experience to be achieved for his students in an integrated setting with some students from the City, but he felt that if it was to happen, it had to happen by the

Williamsville people coming to us, the Buffalo Board, rather than the reverse.

MRS. COON: May I have this marked, please?

(Thereupon, report referred to was marked Plaintiffs' Exhibit 275 for identification.)

BY MRS. COON:

Q You referred previously to a 1969 report by the Board of Education to the Commissioner on progress in accelerating quality integrated education - -

THE COURT: As we go along, could we identify these documents?

MRS. COON: That was Exhibit 271. I am going to ask about Exhibit 275. I wanted to lead into it with 271.

THE COURT: Will you tell me, so we could keep an accurate record of what these are. What is it?

MRS. COON: 275 is a report from the Board of Education on progress in accelerating quality integrated education, dated June 29, 1970.

THE COURT: That is a report to the Commissioner?

MRS. COON: This is a report which was headed as the Board of Education meeting. It is stated that it intends this to be transmitted to the Commissioner.

THE COURT: All right.

MRS. COON: This comes from the Commissioner's files.

THE COURT: We are going to be here together for a while. From now on - - it seems to me there is no secrets in this case that I know of - - I think orderly procedure dictates and I direct that any exhibits that anybody is going to use be marked ahead of time. That is not only a convenience for the clerk, but it is also to make sure that we keep straight where we are on the various exhibit numbers, and also to make sure that the other side, whether it is the plaintiffs or defendants, knows where we are at and what exhibits we are going to deal with during the examination of various witnesses.

BY MRS. COON:

Q Now, you previously referred to Exhibit 271, which is a 1969 report by the Board of Education on its progress to the Commissioner of Education, and I now show you Exhibit 275 for identification, which states that it is a 1970 report?

A Yes, ma'am.

Q It states that it was brought up, that is, proposed to be submitted at a Board of Education meeting. Were you present at the meeting when that was discussed?

A Well, I don't recall this report particularly, but I believe I would have been present when it was discussed. I am sure I have seen it before. It is some time since I have read it.

Q We have Exhibit 271, which was a 1969 report; Exhibit 275, which was a 1970 report. Were there periodic reports submitted to the Commissioner of Education?

A. It was my understanding, my recollection that we were supposed to submit two reports a year to the Commissioner. I don't know if we always did that.

Q. In addition to some of the items which we have discussed previously, this report refers to the Middle School Program as recommended by the Center for Urban Education, and in addition it refers to the redistricting of Bennett, Lafayette and Grover Cleveland High Schools. Do you remember any discussions about redistricting those schools?

A. Yes. I recall - - I want to refresh my recollection- - I do recall the discussion of the redistricting at Bennett in particular. I recall that Bennett matter. I must say that I do not recall the Grover Cleveland or the Lafayette matter in particular. I recall that the Bennett matter was a combination of two things with redistricting Bennett. One of them was overcrowding, and it was also reported that the percentage of black students at Bennett had increased considerably as a result of the previous redistricting of Bennett and Riverside, and that the staff recommended to the Board that Bennett be redistricted slightly so as to reduce overcrowding and in all probability reduce slightly the percentage of black students attending Bennett.

Q Was Bennett redistricted?

A I believe it was.

Q That was one of the statements that were made in the report to the Commissioner as steps to be taken for the integration of schools, is that correct?

A Well, I don't know - - it is mentioned in there for whatever effect it would have had.

Q All right. You don't remember whether or not there was any redistricting or transfers of pupils to Lafayette and Grover Cleveland?

A I remember a discussion with regard to Grover on that subject, but I really don't recall anything about Lafayette at this time or what, if anything, was done on either of those. I'm sorry, I'm a little vague on those two.

MRS. COON: I will offer Exhibit 275 in evidence.

MR. GRIFFIN: No objection, on the same basis as previously stated.

THE COURT: All right, it may be admitted.

(Thereupon, Plaintiffs' Exhibit 275, previously marked for identification, was received and marked in evidence.)

MRS. COON: Would you mark these for identification, please?

(Thereupon, letters referred to were marked Plaintiffs' Exhibits 276 and 277 for identification.)

BY MRS. COON:

Q Mr. Gardner, just as a matter of housekeeping, I show you Exhibit 276 for identification, which is a letter from Commissioner Nyquist to Dr. Gajewski, as President of the Board of Education, which summarizes the 1969 report you have previously referred to.

MR. GRIFFIN: May we have the date?

MRS. COON: The date is August 1, 1969.

MR. GRIFFIN: Thank you.

THE WITNESS: Yes, ma'am.

BY MRS. COON:

Q And that summarizes, as we have stated, the four items which were to be undertaken and additionally referred to this report and asks for two reports in 1970, is that right?

A. Yes, that is correct.

MRS. COON: I would ask that 276 be received in evidence.

MR. GRIFFIN: No objection on the same basis.

THE COURT: All right, mark it in evidence.

(Thereupon, Plaintiffs' Exhibit 276, previously marked for identification, was received and marked in evidence.)

MR. GRIFFIN: So the record is clear, there are some self-serving declarations by party defendants in this case which we dispute, but I assume - -

THE COURT: Mr. Griffin, all these matters are always open for argument about relevance and materiality.

MR. GRIFFIN: I don't want to be regarded in any way as consenting to some of the self-serving declarations that are made by defendants in this case in some of these exhibits that are being put in evidence.

THE COURT: All right.

BY MRS. COON:

Q In previous testimony, you referred to a situation which occurred in 1972, in which the Board, in effect, told the Commissioner that they could not further comply with his directives, is that correct?

A Yes.

Q And at that time, I believe the Commissioner advised the Board of Education that he was sending people in of his own staff to investigate the situation and to make recommendations, is that correct?

A That is correct.

Q And members of the Commissioner's staff did, in fact, come here and make those investigations, is that not right?

A That is correct.

Q I show you Exhibit 277 for identification, which is a letter from Commissioner Nyquist to Mr. Murphy, as president of the Board of Education, stating that he encloses a report and recommendations, dated November 8, 1972.

A. Yes, I am familiar with that letter.

Q That letter, is it not true, requests that the Board study this report and communicate with the Commissioner by January, 1973 as to its comments?

A. Yes.

MRS. COON: I would ask this letter be received in evidence.

MR. GRIFFIN: No objection on the same basis.

THE COURT: All right, you may mark 277 in evidence.

(Thereupon, Plaintiffs' Exhibit 277, previously marked for identification, was received and marked in evidence.)

BY MRS. COON:

Q In your testimony yesterday, you stated that the report was in fact studied by the Board, but that the ultimate action was that it be received and filed with the Board?

A Yes, and a communication was sent to the Commissioner's office advising him of that fact.

Q Which apparently resulted in some of the further communications which were described today?

A That is correct.

Q In reading over that plan which was submitted by the Commissioner of Education, there were several proposals, alternative proposals, for desegregating the Buffalo Schools by redistricting, is that not correct?

THE COURT: Is the plan attached to the letter?

MRS. COON: The plan was attached to the letter. We can submit it in evidence, it is also attached to the interrogatories.

(Thereupon, document referred to was marked Plaintiffs' Exhibit 278 for identification.)

THE COURT: This is the plan of Commissioner Nyquist?

MRS. COON: Yes.

THE COURT: Is there a date?

MRS. COON: The one which was transmitted is November 8, 1972.

THE COURT: Very well.

MR. SCHWARTZ: May we look at it to make sure?

THE COURT: Sure.

MR. SCHWARTZ: No objection, your Honor.

THE COURT: It might be that Mr. Gardner may want to look at it, too.

THE WITNESS: Yes, I would. I remember it, but I would like to see it.

THE COURT: I take it it can be marked in evidence, no objection?

MR. SCHWARTZ: No objection, your Honor, under the same terms.

(Thereupon, Plaintiffs' Exhibit 278, previously marked for identification, was received and marked in evidence.)

BY MRS. COON:

Q Showing you that report which was enclosed with the Commissioner's letter of November 1972 - -

A Yes, ma'am.

Q - - do you have any present recollection of the recommendations which were made in that report?

A Yes, in general terms I do.

Q That report recommended alternative proposals for redistricting the schools in Buffalo, is that correct?

A Yes.

Q And they involved transportation of pupils, did they not?

A Yes, they did.

Q Do you remember any of the dollar figures which were- -

A We had discussed the dollar figures that were applicable to this when we had discussed the Heck Report, because this was really a Re-do of the Heck Report, except the principal difference being that it added consideration of the high schools. We had talked about the cost of busing at the time that we had discussed the Heck Report. I don't recall whether we discussed - - it may be in the report - - the cost figures specifically on this. I do have my notes of Heck Report discussions with me, and they may include some dollar figures, if you would like me to look. We did discuss the fact that there would be a cost factor for the busing, and also the fact that ninety per cent of that money would be reimbursable by the State of New York, so only ten per cent of it would be borne locally.

Q Isn't it true that it is reimbursable in succeeding school years?

A But it comes in to the City as a general revenue in succeeding school years, that is correct.

Q But the initial funds have to be raised in the first year?

A That is correct.

Q I'm not particularly concerned with the dollar amount, would you think that the cost of busing had any effect upon the decision of the Board to simply file it?

A It was cited, it was discussed. I don't believe it was a significant factor in the decision that was made. I say that based upon the discussions of this report which we had at that time, and they were very brief. I must say that I can recall when we received the Heck Report, we listened at some length, we talked about it only casually after that on only a very few occasions, it is hard to remember them. This report, which received even less in the way of discussion, I recall that there were some staff objections of the Board of Education staff to this report, claims of inaccuracies. The staff submitted comments on this report, but we neither discussed the report nor the comments, except on the one occasion when Dr. Sheldon did come down, and even then we didn't deal with the substance of the report, but only the larger question whether the Board was going to take any action at all, whatever it might be.

Q In your opinion, at the time this report was submitted to the Board, would the recommendations contained therein have had an effect upon the integration of the schools in Buffalo?

A No question that they would have.

Q Mr. Gardner, getting back to the middle school proposals that had been made; if the Common Council had provided funded for the Middle School Program, would this have had a substantial effect on racial balance in the schools?

A. If we had built the middle schools, it would have had a considerable effect on racial balance.

Q. Now, in 1974 was money requested by the Board from the Common Council for middle school planning?

A. I believe so. I would have to look at the 1974-75 capital budget request of the Board to tell you. I don't have that with me. I believe money was requested for that purpose.

Q. I believe in one of your depositions previously, you testified that there had been money requested from the Common Coucil?

A. That is my recollection. I am reasonably certain, but I would have to look at the formal request to be one hundred per cent sure. Money was requested on a regular basis of the Common Council each year.

Q. That hadn't been appropriated?

A. We did finally get some middle school planning money somewhere around 1972, 1973, I would think. The figure of one hundred to one hundred fifty thousand dollar stands out in my mind. But that was money that while appropriated, it was not usable because the ruling is that the full amount of the cost for the building must be appropriated before any work can be done on the building. It was money appropriated, but not usable.

Q You said it was for middle school planning?

A Yes.

Q If you haven't got a plan, how could they appropriate money for the construction?

A That argument was made many times to the City Comptroller, absolutely. That is why I said we finally did get some money, but it was not within our reach, it was held really out there as a fund which could be added to, in subsequent years, perhaps to reach enough so that it would be usable for middle school purposes. It has not yet happened.

Q In one of the letters which Mr. Griffin showed you today that you wrote to Commissioner Nyquist, there was a reference in that letter in which you asked the Commissioner that he not delay taking any action because of this present proceeding, do you remember making that statement?

A I don't recall. If I could see the letter, I am sure I will recall it. If you say it is in there, I dare say it is.

Q I show you Exhibit 265 in evidence, and call your attention to the second paragraph from the bottom.

A. Yes, ma'am.

Q Had there been any prior communication between you and Commissioner Nyquist in which this proceeding or this action had been mentioned as a cause for delay?

A. Not that I can recall, no.

Q Nothing prior that prompted that statement?

A. No. The only thing that prompted the statement was a growing feeling of frustration with the lack of forcefull action from the Commissioner's office.

Q All right. You identified here this morning Plaintiffs' Exhibit 270, which is the plan for the middle schools proposed by the Center for Urban Education - -

A. Yes.

Q - - dated 1970. Was there an earlier report by the Center for Urban Education?

A. Not with which I am familiar. There may have been one, but that is the first one that I have.

Q In the report contained in Exhibit 278, which is the

1972 report to the schools, there is a summary of the history of the relationship between the Buffalo Board and the Commissioner's office with relation to desegregation of the schools, and included in that, I call your attention to a reference to August 30, 1966, referring to a report of the Center for Urban Education.

A Yes, I see that. I know that at some point - - well - - I don't recall that specifically, that was before my service on the Board.

Q That is found at Page 5 of that exhibit.

MR. GRIFFIN: Which exhibit is that?

MRS. COON: 278.

BY MRS. COON:

Q It would seem to me in listening to your testimony this morning that the reports in 1966 and 1970 were similar. Let me state to you the 1966 recommendation was, one, a 4-4-4 plan which I believe was also contained in the 1970 report, is that correct?

A Yes.

Q It recommended pupils in the first four grades continue to attend neighborhood schools, was that continued in the 1970 report?

A Yes, it was.

Q That pupils in Grades 5 through 12 attend administratively integrated schools?

A Correct.

Q That would have been the middle school program?

A Yes, that is in the 1970 report.

Q Creation of the middle schools, the comprehensive high school plan which I believe you referred to in this proposal for the new high school?

A Yes.

Q And educational parks, was that included in the 1970 report?

A I think there was some discussion, but it wasn't a main thrust of the report. I think so.

Q Basically, the 1966 and 1970 reports were the same?

A My recollection is that the 1970 report proposed six very large middle schools, and previously, I think the Board has been operating under a plan to build twelve schools, twelve middle schools, over a period of years, ending just about now or a year or so ago. There was quite some discussion with Dr. Wolfe about the size of the schools in the 1970 report. I think that may have been the principal difference between the two, although I haven't compared them.

Q I believe the 1970 report recommended six schools with approximately fifteen hundred pupils to a school, however, those schools were not to be one building?

A They were divided into colleges, really, to sub-schools, but administered together.

MRS. COON: I have no further questions.

THE COURT: Mr. Gregory, do you have some questions?

MR. GREGORY: Yes, your Honor.

THE COURT: Do you want to take a break? Do you have additional exhibits to mark?

MR. GREGORY: No, your Honor.

THE COURT: Do you want to take a short recess before you proceed?

MR. GREGORY: I would like to.

THE COURT: Fine. I know that this case has a lot of documents. It is not like cross examination of somebody in an ordinary lawsuit. Anytime you want to break to get your papers in shape, let me know.

(Thereupon, the court was in recess at 12:05 p.m.)

(PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 12:15 P.M.)

CROSS EXAMINATION BY MR. GREGORY:

Q Mr. Gardner, primarily, in the early stages of my cross examination, I would like to deal with some key phrases that you employed throughout the course of your direct examination, for the purpose of clearing them up in my mind and in the record as to just what you had in mind when you were using these expressions, because, as far as I am concerned, at least, they were very general in nature and subject to various interpretations by various people. Now, again, as background, in preparing myself for this case, I was reading a case in which a particular Court described a school that had otherwise been one hundred per cent white and was integrated because two black children had been admitted to the school. Now, in using the words integrated and segregated and de jure and de facto, does that conform to your definition of an integrated school?

A I haven't used the words de facto or de jure at anytime in my testimony.

Q I think you did.

A I am reasonably certain I did not. I used the word integrated on a number of occasions, and I used the word - - I may have used the word desegregated as well.

Q Is it not a fact that you sent a letter to Dr. Nyquist, which is in the record, stating six or seven different examples of what you considered acts of de jure segregation on the part of the School Board?

A Yes, but that wasn't part of my testimony here. Yes, in the letter I referred to de jure and de facto segregation, both.

Q I won't quarrel with you on that score. In answer to my question, does your definition of an integrated school conform to the definitions set forth in that particular case, namely, two blacks in an otherwise all white school?

A. In my mind an integrated or desegregated school, if we are going to use the two at the moment interchangeably - -

THE COURT: I don't know how he can answer that question. Let's say in the whole district there are only two black students, I don't know how he can possibly answer that. Go ahead.

THE WITNESS: Judge, I wasn't going to give Mr. Gregory much of an answer becaus I can't give him much of an answer, it depends upon so many variables. The answer is just what his Honor said, what percentage is to of the total district, black children, in a city like Buffalo. I would not call a school with two black childre an integrated or desegregated school.

BY MR. GREGORY:

Q All right. Now, you said at the time that you became a member of the Board that you had become familiar then with the racial composition of the schools in the Buffalo School System, is that right?

A. I became generally familiar with it, yes.

Q. And you were given some documents by Dr. Manch touching upon this subject, right?

A. Yes.

Q. You reviewed these?

A. Yes.

Q. Okay. And as a result of reviewing all of these things, you said, I think yesterday - - or words to that effect - - you became disturbed over the situation?

A. That would be - - when you say the situation, as a result of reviewing the papers that Dr. Manch gave to me and discussions and investigation which I conducted for my own satisfaction, I became concerned with the racial imbalance of public schools in Buffalo, yes.

Q. And did it then become your opinion that the racial imbalance that you found to exist within the City was brought about by actions or inactions of the Board of Education?

A. I became convinced that the inaction of the Board of

Education was contributing to the problem, yes.

Q Was contributing to it, not brought it about?

A No, I did not become convinced that the Board of Education had created the problem, but I became convinced that the Board of Education had created a portion of the problem, and had not done enough to correct the situation. I found the Board guilty of acts of omission and commission, both.

Q And in Exhibit 107, which are minutes from the Board, you, in fact, commented on what you considered to be various acts of de jure segregation, is that correct?

THE COURT: Is this 107 we are looking at?

THE WITNESS: Yes. These are minutes of that March 22nd meeting.

BY MR. GREGORY:

Q Right?

A Yes, I did comment upon that.

Q And, as a matter of fact, then those comments were, in fact, reduced to writing in the form of a letter that you sent to Dr. Nyquist, is that right?

A Substantially so, yes.

Q All right. Is it fair to say that both in the minutes and in the letter to Dr. Nyquist you made reference to six various things, namely, the districting of Woodlawn Junior High School, the East High School situation whereby students were permitted to transfer out for the purpose of taking Polish at another school, vocational and technical school policies, the failure of the Common Council to provide money to implement the Middle School Program, the failure on the part of Buffalo Common Council to acquire Bishop Ryan High School for use by the City Board of Education, and the portable classroom controversy?

A. Well, substantially, yes. The portable classroom controversy I don't believe was in my letter. I think Mr. Griffin pointed out that it was in the minutes of the meeting. Yes, I have mentioned at one time or another, either in the meeting or in my letter, the items you mentioned.

Q In addition to those particular six items, today in your examination, you made reference to the Eastside High School, the failure of the City to supply money to construct the Eastside High School that you spoke about during the course of your examination?

A I referred to that this morning, yes.

Q Are there any other acts, other than those seven, either of commission or omission that you feel constitute acts of de jure on the part of the Board?

A I also mention in my letter, I believe, the optional districts. I don't believe you mentioned the optional districts that I mentioned. Are there any other acts? Yes, I talked yesterday about 4 and 34 down in the south part of the City, and in answer to your question, yes, there are other acts that - -

Q I would like you to tell us what the other acts are?

A Mr. Gregory, I'm not - - I will begin by saying I don't pretend to be an encyclopedia of every act that the Board has made or failure to act that the Board - - every failure of the Board to act, which relates to this problem, which could be assigned as evidence of de jure segregation. I could give you a few. I believe the maintenance of the school districts, the high schools, which is an act of the Board, since the Board has the right to change school districts at any time; I believe the failure of the Board to redistrict high schools so as to achieve better integration of the public high schools is de jure - -

is an act which constitutes, in my opinion, de jure segregation. I believe there are others that could be assigned as well.

Q What are they? You say there are others, maybe there are, maybe there are not.

THE COURT: Mr. Gregory, this is a document case and, frankly, I am not going to make up my mind in this case based entirely upon the testimony of Mr. Gardner. I am going to look at the record here, what happened. Whether he can recall the acts or not seems to me may be helpful to get the history, and I am going to permit you to continue and argue to me later that simply because Mr. Gardner could not recall that event now, it doesn't mean it has some importance.

MR. GREGORY: I don't propose at any time during the course of this proceeding to argue to your Honor that it doesn't have any importance because he couldn't remember it. What I don't want to have happen is for my opponents to argue to the Court that Mr. Gardner spoke of acts other than what he specifies, as citing examples of de jure segregation.

THE COURT: They can't argue about things which are not in the record, either in his testimony or in the minutes of the Board. If there is something that occurred, letters or something that occurred in the past, even if it isn't testified to now, if it is in the record, I will consider it. Go ahead.

BY MR. GREGORY:

Q Now, with respect to the districting of Woodlawn Junior High School, you were not a member of the Board at the time, were you?

A No, I was not.

Q All right. So, of your own knowledge, with respect to the workings of the Board in bringing about the districting of that particular junior high school, where did you obtain your knowledge?

A. Well, the knowledge that was behind my letter to the Commissioner, you mean?

Q. Or your attitude that this constitutes an act of de jure segregation?

A. I haven't testified as to Woodlawn, Mr. Gregory. But in answer to your question, I obtained my knowledge as a result of discussion with present and past members of the Board, with the staff of the Board, a review of the documents, the minutes from that period of time, and various other materials, and that satisfied myself of what I stated to the Commissioner on March 22nd.

Q. Referring to Exhibit 1, you can see that the Woodlawn Junior High School is closely associated with a number of grammar schools, is that correct?

A. Yes.

Q. Elementary schools?

A. Yes, they are included in the Woodlawn District, yes, sir.

Q. Okay. Are you aware of the fact - - did it come to your knowledge, in reviewing the facts that went into the districting of Woodlawn Junior High School, that the then black elementary schools were ultimately located in the district were overcrowded at the time?

A There was some overcrowding in some, excess capacity in others.

Q Are you aware of the fact that at the time the site for the Woodlawn Junior High School was chosen, there was, in fact, a push on the part of members of the black community to locate it in that particular area for the avowed purpose of relieving the overcrowded conditions in the black elementary schools in that area?

MR. GRIFFIN: Your Honor, I would object to that line of questioning on the grounds that it is not material to the issues here, as to any, let's say, negative push by any members of either the white or black community relative to the constitution of the school. The issue - -

THE COURT: Well, Mr. Griffin, if you are going to put in evidence - - you already have - - that as far as the actions of the Board, the actions of the Council, that they listened to and were evidently swayed by arguments of the individuals of certain neighborhoods that certain things ought not to be done, that may be a factor in locating any school.

MR. GRIFFIN: I would like to set forth my position, and then the Court may or may not receive the evidence. My position is that the issue is whether there are integrated schools and the law with respect to that and the constitution. Whether any particular segment of the community would offer - - regardless of whether they be black, white or otherwise - - would offer objection to the nature of a school would not be a defense as to having integrated schools. Our position is that it is relevant to show that citizen pressure was brought about against integration, but my position is, for the record, that the reverse is not true. The issue is what is constitutional and what are the duties that the State, acting through its Commissioner of Education and local school boards have, not the choice of any particular segment of the community.

THE COURT: Your objection is noted. I will permit the question, overruled.

THE WITNESS: Could I hear the question again?

(Thereupon, the reporter read as follows: "Q And are you aware of the fact that at the time the site for the Woodlawn Junior High School was chosen, there was, in fact, a push on the part of members of the black community to locate it in that particular area for the avowed purpose of relieving the overcrowded conditions in the black elementary schools in that area?")

THE WITNESS: I am aware that some blacks and some whites wanted the school located where it is, just as I am aware that some blacks and some whites wanted the school district located farther to the west of Main Street and otherwise than as it finally ended up.

BY MR. GREGORY:

Q Now, I am going to find it necessary to ask you the question again. Were you aware of the fact that - -

THE COURT: Don't ask that question again. He responded to it. Ask another question.

MR. GREGORY: If the Court please - -

THE COURT: Maybe you don't like his answer. You have an answer, yes, there was a push. It is already in the stipulation. The stipulation which is filed in this court explains the history of the school, and it says that a lot of people wanted, first of all, the school to be located at another place, and then after it was determined where the school would be, a lot of people -- there were a lot of plans how the district lines were to be drawn. I don't see how Mr. Gardner could give you any further information.

MR. GREGORY: I don't mean to be quarrelsome, I really don't - -

THE COURT: You are asking quarrelsome questions, and in a contentious manner. Just go ahead and ask questions. If you don't get the answer you like, ask another question.

MR. GREGORY: My objection - -

THE COURT: Don't make speeches. Next question, please. Ask any question you desire. You don't have to preface your questions by saying, 'Well, the answer that you gave, Mr. Gardner,

forces me to ask another question.'
Just ask questions.

BY MR. GREGORY:

Q All right. Now I will ask questions. Are you aware of the fact that one of the reasons for locating the school in that particular area was because people in the black community wanted it there to relieve the overcrowded conditions of the black elementary schools in that area?

A I am aware that some blacks made that argument, yes.

Q All right. Now, with respect to East High School, and the policy of the Board to permit pupils to transfer out of that particular school to take courses in languages, is that correct, there was such a policy, right?

A Yes, sir.

Q Do you know when that particular policy went into effect?

A Well, that is part of a larger Board policy, allowing students to transfer to take courses not offered in their district high school. I don't know how long that has been in effect. It wasn't a policy particufor East, as far as I am aware.

Q You know it has been a long standing policy, don't you?

A I think I said it has been in effect a long period of time, but I don't know how long.

Q Much longer than before East became a predominantly black school, is that correct?

A Yes. What happened after - -

Q Is that correct or isn't it correct?

A I don't know.

Q Then say you don't know. Now, any student in East High was permitted to transfer, if they saw fit, is that right, to take a course that wasn't offered in that particular school?

A Theoretically, but I don't know if it worked out that way practically.

Q I didn't ask you that. I asked you if every student was afforded the same right?

A In accordance with the police established by the Board, that should have been the case.

Q All right. As a matter of fact, blacks transferred out of East High for that same reason, to take courses that were not offered at East High School, is that

correct?

A. Some few did.

Q. But they did nonetheless?

A. Some few did.

Q. All right. They went to various schools like Grover Cleveland, Kensington and Bennett for those reasons, and South Park, is that right?

A. I don't know to what schools they went. Some few transferred from East to take courses not offered at East, yes.

Q. Okay. Now, it appears that the big gripe was about white students who sought the right to leave East High School to take Polish at some other school, is that correct?

A. Polish and other languages, yes.

Q. All right. How many did this in any particular year? Do you have any facts or figures or statistics?

A. If I recall correctly, there was something in the record yesterday on that, and it sounded about right to me, that there were approximately two hundred or there were at least two hundred white students from the East District taking language courses at other schools.

Q What particular year?

A This was, I think, in 1972-73.

THE COURT: Mr. Gregory, this points up, it seems to me, a little bit of difficulty here. I am trying to follow it. Mr. Gardner absolutely cannot be expected to recall numbers or times or dates. Perhaps you can, you have studied this case very carefully, but you see, this information is all in the stipulation, and it really don't matter whether he can recall the number or not or whether he recalls it accurately or not. Stipulation 56 says, "That as of October 22, 1971, two hundred fourteen students residing in the East High School District were attending school at South Park. Of these one hundred seventy-six students were registered in the Polish Program, one hundred seventy-three white and three black; thirty-eight students were registered in the Russian Program, twenty-four white and fourteen black. And in the same manner, there is reference in 57, 58 and 59 to other figures here. So I think if we are going to refer to figures, we can go to the stipulation. I am not going to expect any witness, whether he is put on the stand by you or by anyone else here to recall all the facts and figures out of his head, it just would be impossible. You may continue.

BY MR. GREGORY:

Q Yesterday in your testimony, you said that in the fall of 1972, approximately one hundred fifty whites were expected to enroll at East High School because the Board had changed its policy with respect to transfers out for the avowed purpose of taking languages, is that correct?

A. I think what I said was that the white graduates of elementary schools within that district, the East High District, amounted to approximately one hundred and fifty or a few more than that and, yes, we had reason to expect that they would attend East High School.

Q And, as a matter of fact, they did not, did they?

A Very few of them did.

Q As a matter of fact, your testimony yesterday, as I recall, was something to the effect that a handful, maybe twelve - -

A No more than that, surely.

Q - - appeared and registered at East High School?

A Yes, sir.

Q And do you have any idea - - or what can you attribute - - what do you attribute it to, as long as this policy was no longer in effect, and offering them a means of escaping out of the district, to what do you attribute the fact that approximately one hundred and fifty, only a handful, or twelve, as you have described, did show up and register?

A I attribute it to an unwillingness to attend an all black school, and to the fact that those students found means to avoid attending that school.

Q Well, the point I am making is what means do you attribute it to?

A You mean how did they do it?

Q Yes.

A As I said yesterday, they did it in a variety of ways. One way was the use of false addresses - -

Q At that particular point, let me stop you, do you know of any examples where this was done?

A This was discussed on a number of occasions. I can't recall them specifically at this point. I can tell you this - -

Q Or how many, you can't tell me specific names, and you can't tell me how many?

A No, sir, I can't. I can tell you the basis for my knowledge.

THE COURT: Mr. Gregory, Mr. Noel can only take one person at a time.

MR. GREGORY: I'm sorry, I appreciate that, your Honor. I am sorry, your Honor.

THE WITNESS: I can't give you specific names, I can't give you specific numbers. I can give you the basis for my opinion.

BY MR. GREGORY:

Q Well, you also said that preferential standards for admission to vocational schools and technical schools was also a means employed by the students to escape that particular district?

A Yes, sir.

Q All right. Do you have any idea of the number, again, in that particular situation, that employed that particular method?

A No, I really can't - - no, I can't give you an exact number, I can't give you their names, but I can give you the basis for my opinion.

Q The third one that you alluded to yesterday was that students were permitted to transfer out of East High School for courses that were not offered at East High School, with the exception of the languages, which was prohibited?

A Yes, in certain cases where the policy established by the Board was not honored and, of course, could have been established for students, but was not established and hence, they transferred out.

Q But, again, in this situation, you can't relate that general terminology into specific numbers today?

A Mr. Gregory, I can't give you a specific number, I can't give you specific names, but I can give you the basis of my opinion, and I can also tell you this, that the way the Board of Education operates is not for the policy making Board itself, to be intimately conversant with the specific numbers, names and details. It is our job, it is the job of the members of the Board, to understand what is happening and to understand the facts and the application or the nonapplication of Board policy. If your question can go to that, and if you want to ask me about that, I can surely answer it.

THE COURT: Let us be in recess, please. We will return at 2:00 o'clock.

(Thereupon, the court was in recess at 12:45 p.m.)

* * * * * * * * * * * * * *

(PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 2:10 P.M.)

ARNOLD B. GARDNER, called as a witness, on behalf of the Plaintiffs, and having been previously duly sworn, resumed and testified further as follows:

THE COURT: All right, Mr. Gregory, when you are ready.

CROSS EXAMINATION BY MR. GREGORY (Cont'd.):

Q Mr. Gardner, to summarize the last part of those questions, you alluded to four means by which you felt the white students in the East High School District, in the vicinity of 1972, were escaping from that district to otherwise white schools, is that correct?

A Yes.

Q All right. But also in answer to those - - to my questions, you were unable to specify the number of white students that escaped from that particular district, as far as numbers are concerned, by those various means that you detailed?

A Except to the extent that one can compare - - that I can compare the estimated attendance of white pupils entering 9th Grade which the Board expected, in 1972-73, and 1973-74, based upon the graduation from feeder schools in the district, and compare that figure - - those figures with the actual enrollment and if you do that, the total differences are about one hundred and fifty per year down to a dozen or so, or less.

Q That figure, as you said yesterday, of approximately one hundred and fifty, those one hundred and fifty, those approximately one hundred and fifty white students who graduated from those grammar schools that feed into the East High School District, could have escaped from the East High School District by means other than the four you have enumerated, name[illegible] attending private schools, parochial schools, movi[illegible] out of the district between graduation and time for enrollment in September, is that correct?

A Yes, that is correct.

Q All right. Can you, at this particular time, even in approximate numbers, tell us how many of that approximately one hundred and fifty that you estimated would enroll in East High School, escaped by any one of those five or six different means?

A. Well, I can't do it as I sit here today, no. That information is available in - - from a variety of reports that I think - - from which I think it can be assembled in good part. I don't have it today.

Q. Okay. Now, tracing back the history - - let's do that to a certain extent because I feel it is important - - tracing back the history of East High School, some of which you probably have gleaned from experiences other than on the School Board, right, at one time East High School, probably in the middle 50's, was predominantly white, is that correct?

A. At one point it was. I don't know when, chronologically, but it was at some point.

Q. I am sure as a resident of the City of Buffalo for a number of years, that you appreciate there have been residential changes since that particular time, since the mid-50's, is that correct?

A. Yes, sir.

Q. All right. And is it not a fact that one of the areas affected by residential patterns to a great extent was the East High School District?

A The East High School District was affected. I don't know if it was affected to a greater or lesser extent than other parts of the City.

Q I didn't ask you whether it was or wasn't, but the fact is there has been a considerable influx of blacks into what was - - I am speaking specifically of the East High School District in terms of residential patterns - - there has been a great influx since the mid-50's of black families?

A I am really not trying to quibble with you. I would say there has been an influx of black families. Whether the great influx has been since the mid-50's or whether it was years before the 50's and has continued at a slower rate since the mid-50's, I don't know.

Q Would it be unfair to say that the major cause - - would you agree or disagree - - that the major cause of the racial imbalance that exists in East High today was brought about by a change in neighborhood patterns, residential patterns?

A In East High School, yes, as the school is districted today.

Q As the school is districted today?

A Yes, sir.

Q Do you know of any major redistricting of that particular district in recent years?

A Not to my knowledge.

MR. GRIFFIN: So that it is clear, there is in the stipulation, a change in the district, which I think we should be aware of, and that I will bring out on redirect examination.

THE COURT: All right, thank you.

BY MR. GREGORY:

Q Now, it is also your testimony then, based on this last remark, that some of the policies of the Board you feel have contributed to the racial imbalance that exists today, is that correct?

A At East High School?

Q Yes.

A Yes, that is correct.

Q But to what extent you are not prepared to say in terms of numbers, right?

A Yes, that is correct.

Q Okay. Now, you listed as a third incident of what you felt was de jure segregation the vocational and technical admission policies?

A. Yes, sir.

Q. All right. Would you elaborate on that a little further, please?

A. Yes, I will, and I had here yesterday from my file, a memorandum that was given to the Board, and Mr. Griffin took it yesterday, and I wonder if I could have it back, please? It would help me to answer your questions.

MR. GRIFFIN: Yes.

THE WITNESS: Yes, sir. I came to the conclusion sometime in 1971 that the policies of admissions to vocational and technical schools were being operated, to the Board's knowledge, in a manner which was discriminatory against black applicants, and I drew that in part based upon the material that is contained in the report that I have in front of me, to which I referred yesterday, which indicated, for example, that at Burgard, which offers a course in mechanical skills, automotive mechanics, a hundred forty-eight blacks applied - - one second, I want to make sure I am reading this correctly - - one hundred forty-eight blacks applied and one hundred and forty-six were accepted, and if I could have the ethnic census, it would help me in answering your questions.

Q Ethnic census, what?

A There was an ethnic census Mr. Griffin had yesterday.

MR. GRIFFIN: Exhibit 6?

THE WITNESS: Yes, sir.

MR. GRIFFIN: That is the 1973-1974, Exhibit 6.

THE WITNESS: Thank you. Speaking of the period 1971 - - well, the period 1971, the situation I believe continued appreciably thereafter, also, and considering, as I did, that at the time the black population in the schools was approximately close to forty, between thirty-five and forty in 1971, it is now forty-five black and Spanish, close to forty per cent during this period, I found that at Burgard, almost all the black applicants were accepted at Burgard, so that that school was thirty per cent-- 36.1 per cent black at about that point of time. At Emerson, there were fifty-nine applicants and twenty-four were accepted. At Fosdick and Emerson, it was forty-five per cent black at the time. At Fosdick-Masten School, that was ninety-five per cent black, there were one hundred and twenty-three applicants, ninety-three were accepted. At Hutch Tech School, it was sixteen per cent black, there were eighty-one applicants, and thirty-three were accepted. At McKinley School, at that point it was sixteen per cent black, there were one hundred and sixty applicants of whom thirty were accepted. Seneca, there was seventy applicants, forty-three accepted, and that school was

19.2 per cent black. Now, the percentage of black students accepted, which is also part of the exhibit that I am referring to, the percentage of blacks accepted in September of 1971, the total accepted was 29.3 at Burgard; 16.1 at Emerson, 80.8 at Fosdick, 9.6 at Hutch Tech, 10.4 at McKinley and 12.2 at Seneca. Now, I drew, what seemed to me, from discussions we had at the Board and my review of these statistics and discussions with the staff, I drew a significant difference between the very high percentage of blacks accepted at Fosdick-Masten, for example, and at Burgard, to the situation at Hutch Tech, McKinley and Seneca, where the percentages were very low, and I pursued it further with discussions of staff people, and talked about the way that the system of admissions operated, partly academic grade records in the elementary schools, and partly the admission process, with the examination at Hutch Tech added in, and I satisfied myself, and I believe that there was considerable investigation and study of this by other people at the same time who pursued it much more completely than I did, that the system was not working so as to give a fair chance of admissions, especially into the three schools I have mentioned, for black students. I also discussed this with a considerable number of black students in several of our schools. I remember particularly at Clinton Junior High School - -

BY MR. GREGORY:

Q Let me stop you there. You go to the point where you say you discussed it with a considerable number of black students?

A Eight or ten.

Q All right. That is what you mean by a considerable --

A Yes, sir, eight or ten black students at Clinton Junior High School, and I recall discussing it with perhaps a half dozen at Woodlawn one day, and I remember out at School 8 one day also I discussed it with, let's say, three or four. So that altogether, I must have discussed it with twenty-odd black students. I was interested in learning their plans for application for secondary schools, and in particular, on the subject which you just asked me about. Almost in every case, those students told me that their plans were to go to East, or in one or two cases, I recall Burgard being mentioned, Fosdick as well, and when I questioned them about their reasons for not applying to some of the other vocational and technical schools, the answer I received was that there was not much point in their applying since the standard was harder for a black to be admitted to those schools than it was for a white student with the same record.

Q Did you check this out?

A That is one of the things that led me to the discussion that I had with Mrs. Girard, who is in charge of this project at the Board of Education. It led me to review these papers and led me to feel that I had a basis for making the statement that I did to Commissioner Nyquist in my letter.

Q It led you to believe that you had reason to make an investigation of the charge these students made, and then, I take it, that you did conduct such an investigation - -

A Along - -

Q - - to test the validity of their charges or their statements, if they were not charges?

A An investigation along the lines that I had described to you.

Q Your investigation consisted of reviewing a number of applications made by black students to these various vocational schools, is that correct, and reviewing their success in being accepted into those schools, is that correct?

A It consisted of that in part, and it also consisted of discussions with central office staff.

Q Like who?

A Mrs. Girard, who was the supervisor in that department, and perhaps also - - I don't recall - - maybe

Mr. Schmidle who was in charge of vocational education and, also, on at least two occasions, with principals from the vocational and technical schools at one of our periodic conferences between the Board and principals.

Q And from these discussions that you made, you came to the conclusion that the balance, the composition, the racial composition of the students in the various vocational schools was the way it was because of Board policies relative to discriminatory tests for black and white students?

A. No, sir, I didn't say that at all. What I said was that as a result of the investigation that I conducted, I satisfied myself that regardless of what the Board policy was - - the Board policy never was one - - the official policy - - was never one of preferential treatment for whites or discrimination against blacks - - regardless of what the policy was, the system was, for some reason, operating as to make it more difficult for a black with a comparable record to be admitted to certain schools than for a white.

Q That is it, what was there in this system that made this possible, that brought this about, this is what I am interested in - -

A Well - -

Q - - what did your investigation reveal?

A My conclusion, from the investigation that I conducted, was that in the cases where the interview was the critical factor, the subjective standards that were applied by the interviewers varied in some occasions according to the preconceived thinking of the interviewer with respect to the desired racial composition of the entering class. I also found on a number of occasions - - very difficult to justify, I would say impossible to justify - - inconsistencies between the academic records of students who were admitted and the academic records of some students not admitted. I recall one case in which a black student with an academic standing in the high 80's or 90, 91, in that area, had been rejected for admission to a particular vocational or technical school, and a review of the admitting - - a sampling of the admitted students, same school, same class, showed students with considerably lower academic standings having been admitted. I remember questioning about that, and that case was reversed by the Board, if I recall it, because it could not be justified.

Q Someone brought it to the attention of the Board?

A. Someone brought it to the attention of the Board, and I think what it apparently did.

Q Someone brought it to the attention of the Board?

A. Yes.

Q It was rectified?

A. Yes, sir.

Q If I understand what you have said over the last couple of minutes, you said the Board had no discriminatory policies relative to admissions in vocational schools, right?

A. The stated policy of the Board surely was not discriminatory.

Q How about the policy, other than the stated policy, was there a policy about - -

A. I can't say the Board had a discriminatory policy. What I am saying to you is that, as with many policies, sometimes the implementation varied from the intent.

Q In effect, if there was discrimination practice, and I won't admit that, but if there was discrimination practiced, it was on the part of people within the schools themselves, personnel within the schools who were in charge of admissions, is that correct?

MR. GRIFFIN: If it please the Court, I would just like to take a position relative to this type of questioning, in that the Board has seven members and all of its employees, and the implied suggestion in this line of questioning is that actions on the part of the employees are not attributed to the defendant Board, which is contrary to law, in my judgment.

MR. GREGORY: May I make a quick comment on that part, your Honor? I appreciate that we are not in the principal agent situation or a tort situation, we are in a situation - - What I am saying is that some malintent on the part of an employee of the Board should not be considered malintent on the part of the Board, and I think that in the next two questions I will clear that aspect up.

THE COURT: I will listen to it and make a judgment.

BY MR. GREGORY:

Q All right. That is what you really found to be a fact, right, there was no basic policy of discrimination with respect to admission to vocational schools on the part of the Board. Now, did you or someone bring these practices to the attention of the Board proper?

A Yes, sir.

Q Is it not a fact that the Board upon - -

A May I - - I don't mean to interrupt - - May I finish my answer?

Q All right.

A I paused, I want to be complete about it. The general problem in the case of Hutch Tech, the admission policy was specifically brought to the attention of the Board and received very great attention and discussion and finally, a solution.

Q It was changed, wasn't it?

A It was changed.

Q It was corrected?

A It was corrected, it was changed in a way that the Board requested, with much discussion.

Q Did it meet with your approval to change?

A Did it meet with my approval, personally, yes. In the case of the other schools, I do not recall that the general policy of admissions or dealing with the disciminatory pattern I have described came to the Board as such. I don't think the Board acted upon that. I think that was discussed on some occasions and attended to by the staff. I could be wrong, but I don't recall the Board dealing with admission policies, specifically at these other schools, although we may have discussed them, we surely did not act upon them, as such.

Q All right. You have this report?

A Yes. The ethnic census, yes.

Q In your opinion, which of the vocational schools, referring to just the vocational schools, are not integrated schools in the City today?

A What do you mean by integrated schools? We were talking about that earlier.

Q Here we go again. My definition of an integrated school and your definition of an integrated school are maybe two different things. That is exactly where I started this morning. Let me ask you which of those schools do you feel is not an integrated school, based on your attitudes and opinions toward what is an integrated school?

A Let me answer you this way, if I can. It is a difficult question because I don't know what the term means in this context. I would say this to you, however, that in the case of McKinley and Hutch Tech and Seneca, I find the discrepancy between the percentage of black pupils at those schools and the percentage of black pupils in the overall district difficult to justify.

Q You said McKinley?

A McKinley, Hutch Tech and Seneca, based upon the reports before me.

Q Okay. Based on that report, based on those figures --

A Yes, sir.

Q -- in your opinion, those are not integrated high schools?

A I don't know what that means.

Q What does it mean to you, tell me what it means to you?

THE COURT: Mr. Gregory, he gave an answer, yes. He said under the circumstances he cannot. I think, frankly, although we will listen to expert opinion, and Mr. Gardner has been with us a long time, eventually, on the overall, it is something that the Court has to decide.

MR. GREGORY: Right. I thought his attitude toward the thing, based on his entire testimony, would reflect what his thought on his entire testimony is. I won't pursue it any further.

BY MR. GREGORY:

Q Now, let me ask you this. You cited Hutch Tech, McKinley and Seneca, what is the percentage of black students at Hutch Tech, so that it is in the record, as of October 1973?

A 18.7 per cent, according to the report I have here.

Q And back in 1966, the percentage of blacks at Hutch Tech was what?

A. 10.2.

Q. A quick mathematical computation says it has increased 8.5 per cent over those years?

A. I don't know what the percentage is, but it is nothing like the percentage that the blacks have increased out of the total Buffalo student population.

Q. That is not the question I asked.

A. About eighty per cent increase.

Q. All right. Now, McKinley's percentage is 18.4, right, presently, as of October, 1973?

A. Yes, sir.

Q. And as of January, 1966, it was 13.8?

A. Yes, sir.

Q. That is also a marked increase, is it not?

A. In relative percentage, yes.

Q. And with respect to Seneca, Seneca, as of October, 1973, was 19.6 per cent black, right?

A. Yes, sir.

Q. And as of January, 1966, it was 8.1 per cent?

A. Yes, sir.

Q. That again shows a considerable increase, as a matter of fact, 11.5 per cent?

A. It shows more than that. Actually, it shows better than one hundred per cent, it shows about one hundred and fifty per cent.

THE COURT: He is talking about the difference.

THE WITNESS: The difference, I'm sorry. I was comparing what the percentage of blacks had increased. Of course, you are right, I am sorry, 11.5 per cent of the whole.

BY MR. GREGORY:

Q You are familiar with the location of all of these schools?

A Yes.

Q All right. Now, is it not a fact - - Strike that. You are also familiar with what basically constitutes the core area of the City of Buffalo, are you not?

A Yes, sir, I think I am.

Q Okay. Of all of those six vocational schools, eliminating the Boys Vocational, which of those six schools is furthest from the core area?

A I suppose McKinley may be. Let's see - - Yes, I guess McKinley is.

Q And the other schools, Burgard, Emerson, Fosdick, Seneca and Hutch Tech are in more close proximity to the core area, is that correct?

A. Yes, sir.

Q All right. Which of those schools would you say has the highest standards for admission?

A. Well, I suppose you would have to say - - I wouldn't say it is the highest standard - - you would have to say the one school that imposes a standard the others don't is Hutch Tech.

Q All right. Is it also not a fact that the school district for vocational schools is the Buffalo City School district?

A. Yes, it is.

Q Anybody residing within that school district is entitled to enroll at any one of those schools?

A. Entitled to apply for enrollment.

Q That is the same as the academic school?

A. Cross districts, and people travel by bus to attend them.

Q Isn't it a fact that, although it is not labeled there, the school noted as Fosdick is, in fact, really a girls vocational school?

A. Yes, it is completely girls.

Q. Is it fair to say it is located smack in the center of the core area?

A. It is in the inner-city. I don't know how you would define core area, but it is the center city, and whether it is core or center city, maybe those mean the same.

THE COURT: I think when we look at the map, it appears that the schools with red circles, indicating on the map schools with over fifty per cent black students, that sort of would be in the center of all those schools?

THE WITNESS: Yes, your Honor, except there are black schools, for example, 82 and 85, over in the Kensington area. All that I meant was that I'm inclined to think of the core area as the downtown section, the William Street, Michigan, Oak, that area, and the area Fosdick to be inner-city, not core, it may be a distinction without a difference.

BY MR. GREGORY:

Q You think in the immediate surrounding area of Fosdick Masten there are white families?

A. Not very many. Surely not many.

THE COURT: Mr. Gardner, I wonder for my information, and maybe this is in the stipulation, this is just sort of for information purposes, the vocational schools, I suppose some of the courses given are similar and some are not. Can you explain what the differences are between Hutch Tech and McKinley and Emerson and Burgard and Seneca?

THE WITNESS: Yes, sir. For example, McKinley is really pretty much of a comprehensive high school. They offer academic as well as vocational subjects. Their unique aspect is graphic arts at McKinley. Hutch Tech is a technical school with scientific subjects, advanced science, mathematics are offered there.

Fosdick Masten offers cosmetology and health sciences. Burgard offers automotive and airplane mechanics. Let's see, Kensington, among other things, offers food training. Have I covered them all?

THE COURT: What about Emerson?

THE WITNESS: Emerson offers plumbing, carpentry, things of that nature. They all offer some things in common,

BY MR. GREGORY:

Q They all offer academic subjects?

A. Yes, in different measure.

Q English, et cetera?

A. Yes. Some of these are mandated by the State, sure.

Q The basic differences between the schools lie in the vocational courses they teach?

A. Yes, sir.

THE COURT: If a young pupil is interested in automotive mechanics, it doesn't matter where he lives in the City, he may apply to Burgard?

THE WITNESS: Yes, sir.

THE COURT: And if he has a special interest in scientific things, maybe the computer or related things, mathematics and so forth, any pupil, no matter where he lives may apply to Hutch?

THE WITNESS: Yes, sir.

THE COURT: The same would be true with the other ones?

THE WITNESS: Yes, sir.

BY MR. GREGORY:

Q I was at the point where we were talking about Fosdick Maste, which you readily see has a black enrollment of 97.8 as of October, 1973?

A Yes, sir.

Q I think that you said that there were virtually no white applicants?

A Yes, that is correct.

Q What, if any, steps could the Board take, without completely distorting the vocational school policy; in other words, anybody can apply as long as they live within the school district, what steps could they take to integrate Fosdick Masten if no whites applied?

A. Fosdick Masten has been a step-child, because for the last four years, until 1974-75, the Board was under orders to vacate that school and to move out, because it was going to be used for an Urban Renewal project, and we have done very little, and the students of that school have suffered because of it. The plan was that those students would be reassigned to the Eastside High School which was going to be constructed and we would offer courses in cosmetology and in health science at the Eastside High School, where those students would have an opportunity to take general subjects, academic subjects, since that was going to be a comprehensive high school. In the same budget message as that which the Mayor abandoned the Eastside High School, he informed us for the first time that the School Board should plan to continue indefinitely Fosdick Masten High School, although for some years, the Department of Urban Renewal in the City has been after us to get out of it.

Q All right. In answer to my question put maybe in a different way - -

A As a result, that will continue to be, unless something is done, all black.

Q As a result, there is no way you can force white people into that school?

A No. We can close that school and move those students to other schools and offer the courses elsewhere, if we can find the facility to do it, as we did until the Eastside High School was abandoned.

Q Now - -

A That is, - - if I can say this - - that is the sort of thing that is behind my statement that even regardless of the intent in abandoning the Eastside High School, the effect of giving up Eastside High School is to prolong the situation of segregation at Fosdick Masten and to make more difficult the achievement of an infreased degree of integration of the high school students in the City of Buffalo.

Q Okay. Now, the fourth act that you alluded to as an act of de jure segregation was the failure of the Common Council to provide money to implement the Middle School Program, is that right?

A Yes, sir.

Q All right. Since this particular plan came into existence, how many middle schools have been built in the City?

A One.

Q And that was what?

A West Hertel.

Q West Hertel. Are there any other middle schools in existence in the City?

A Yes, we have the Fillmore Middle School, which was formerly a junior high school.

Q How many did the plan encompass?

A Originally, twelve.

Q Was that modified?

A It was later modified - - no, it was never modified, there was a proposal to modify it to six in the 1970 report of the Center of Urban Education, but that was never adopted by the Board.

Q So that the 4-4-4 Plan, it is fair to say, intended the twelve middle schools be built in order to implement this plan?

A Yes, sir.

Q Okay.

THE COURT: Excuse me, Mr. Gregory. West Hertel is a middle school and also Fillmore is a middle school. Now, do they operate under the 4-4-4 System?

THE WITNESS: Yes, they do.

THE COURT: When students, I suppose, in the area, in the school district contiguous to West Hertel, after they have finished their fourth year, then they go to the West Hertel School for four years?

THE WITNESS: That is correct, and some students who were not in the immediately contiguous feeding pattern, some students may come by bus from other districts. The theory really was that if there was objection to busing kids from one district to another, and thereby not letting them go to their neighborhood schools, the theory was that nobody would have a neighborhood 5 through 8 Grade, everybody would have to move to an intermediate school.

THE COURT: You may not have to move as far, but you would have to move somewhere?

THE WITNESS: That is right. Nobody could say that my child should be going from 5 to 8 at a nearby school because nobody was going from 5 to 8 that way.

BY MR. GREGORY:

Q Let's dwell on the West Hertel School. I think during the course of your direct examination, you alluded to the fact that there was an uproar that was racially motivated with respect to funding the West Hertel School, is that correct?

A I don't recall if I specifically said that, but - -

Q Do you feel that is a fact?

A Basically, yes, that is a fact. I probably said that, I just don't recall it.

Q Isn't it fair to say not that the Council refused to fund the school, but that at one particular point in the progressive steps of financing that particular school, that the Council was reluctant to finance

A Well, the reluctance demonstrated itself for quite a while with the Council's failure to authorize the bonds to pay the tradesmen. I would say more than a reluctance, it was a refusal later corrected.

Q But ultimately, it was funded?

A Yes, sir, but ultimately it was funded.

Q All right. You have listed that as one of the acts that you feel the City defendants committed that amounted to de jure segregation, right?

A I don't recall. I would have to look at my letter. I referred to the Middle School Program.

Q West Hertel is a middle school, isn't it?

A But I am not singling West Hertel and the financing problem out as the sole aspect of it. In my opinion it is one part of the overall failure of the City.

Q So that the record will reflect that and the Judge is aware of it, let's dwell on that a bit. When West Hertel was first proposed by the School Board, were you a member of the School Board?

A No, sir, I was not.

Q Based on your time on the School Board, did you, in fact, become familiar with the facts relative to the West Hertel Middle School from its inception?

A. I learned, yes, I did.

Q. All right. Now, before I go any further in that line, do you know what the ultimate cost of the construction of that school was, in rough terms?

A. Three million, something in that neighborhood, perhaps a bit more. About three million, I think.

Q. Now, when West Hertel Middle School was first proposed by the Board to the Common Council, you were not on the Board at the time?

A. That is correct.

Q. And, of course, you have said clearly, you stated the law correctly, that the Board proposes and the Council either approves or disapproves and acquires sites for schools?

A. Yes.

Q. That site was proposed to the Common Council, was it not?

A. Yes, sir.

Q. And the Common Council did, in fact, acquire the site?

A. Yes, sir.

Q. All right. Do you know whether or not the Council approved bond monies for the construction of that school at that time?

A No, I don't know.

Q Did you come to find out, as a member of the Board, because of a later controversy that arose?

A I came to find out that the Council had approved the bond monies to construct the school at that point, yes.

Q When the so-called furor about West Hertel arose, you were a Board member?

A No, sir.

Q How long ago was it that that arose?

A The school opened - - If I can remember, the school opened in '69, late in the year - - no, it probably would have opened September, '69, and the furor was over before I went on the Board. I went on the Board in May, '69.

Q In any event, is it not a fact then that when the Board of Education proposed the site of the West Hertel Middle School to the Common Council, they requested this site for the purpose of constructing a junior high school?

A Yes, sir, that was the original purpose.

Q Right. Is it not a fact that the avowed and stated purpose and the stated need for that particular school when it was first proposed to the Council was to alleviate the overcrowded conditions at Riverside High School?

A Yes, sir.

Q All right. At that particular point, any terms of race or anything else never entered the picture, did it, to the best of your knowledge?

A Not to the best of my knowledge, no.

Q It was for the avowed purpose of relieving the overcrowded conditions at Riverside? As a matter of fact, the funding of a school, as a practical matter, proceeds at different stages, is that correct?

A Yes, sir.

Q In other words, the Council does not appropriate the funds in one lump sum right at the beginning, it is spread over the course of the construction term, right?

A Generally speaking, yes.

Q This is the standard practice, is it not?

A It is becoming less so now because of some rulings, but it was at that period, certainly.

Q Isn't it a fact that the first bond resolution authorized by the Common Council relative to the construction of the West Hertel Middle School, and this, as a matter of law, must be stated on the bond resolution, the purpose for which the bond is issued, is that correct, was for a junior high school?

A I had been so advised. I don't know that of my own knowledge, but I am advised that is correct.

Q All right. Now, when the so-called furor over the West Hertel Middle School arose, how much money was needed to - - Excuse me just a moment.

THE COURT: Do you want the stipulation?

MR. GREGORY: Will you excuse me for just a moment, please?

BY MR. GREGORY:

Q All right. The last question I think I asked you was relative to the stated purpose on the bond resolution for funding that school was in fact for a junior high school, is that correct?

A As I said to you, I don't know that of my own knowledge, but I have been so advised.

Q Now, the aspect of the West Hertel Middle School that the Council reluctantly funded was a remaining

$900,000 bond resolution, isn't that correct?

A. I don't know the exact dollars.

Q. All right. Would you quarrel with my statement?

A. No, I accept your statement.

Q. It is in the stipulation.

A. I just don't know. I know it was the last year of the - - I assume about a third, probably, would have been right.

Q. So that in effect, what happened is that in mid-stream without any consultation with the Council, the Board of Education changed the stated purpose of that school from a junior high school to a middle school, is that correct?

A. Well, I don't know that that is correct. I don't know, no. I don't know that it was done without consultation with the Council. I don't know if it was done in mid-stream or earlier than that or later than that. It happened sometime, it became a middle school.

Q. At some time between the original inception and the original bond authorization?

A. When was the first bond authorization?

Q. I don't know.

A. That would help me to answer your question, I would relate it to the Middle School Program.

Q. I really don't know. In any event, the purpose for the school, and the stated purpose for the school was changed, was it not?

A. I was - - I don't know that of my own knowledge, but I have been advised of that.

Q. And you have indicated, at least to me, in cross examination, that the reason the Council refused to authorize the remaining $900,000 to complete the construction of the school was because of racial considerations, isn't that the tenor of your testimony relative to this situation?

A. The Council - - what I indicated to you was that the Council was put under considerable pressure from members of the community because of racial considerations, and the integrated nature of the building, and that in my opinion the action of the Council in deferring and delaying the funding of the balance of the project related to those considerations.

Q. In any event, as it turned out, the Council didn't succumb to those racial pressures you are talking about?

A. Finally, they provided the money to finance the building, yes, sir.

Q Wasn't the conversion of West Hertel Middle School from the stated purpose of the junior high school with no contemplated integration at all to a middle school with contemplated integration, was that an act, an avowed and stated act of the Board to implement the integration program in the City of Buffalo, in your opinion?

A. First of all, I don't know that the junior high school was not going to have any integration and, secondly, I just - - I couldn't answer - - I don't understand your question, maybe it ought to be read back.

Q Let me state it again. You have agreed with me that in its original inception the West Hertel Middle School, as we know it today, was going to be constructed for the stated purpose of serving as a junior high school in the Riverside area, right?

A. Yes, sir.

Q. All right. Sometime after that, the Common Council acquired the site, as requested by the Board of Education, and as requested by the Board of Education, authorized the issuance of bonds, which stated that this bond was issued to finance the construction of the West Hertel Junior High School, okay, do you agree with that?

A. I have answered that one a variety of times before. I don't know of my own knowledge, but I am advised it is the fact.

Q Sometime after those acts that I have just referred to, the Board of Education changed the stated purpose, junior high school to service the Riverside area, to a middle school, as you have described, for the purposes of implementing educational programs?

A. Well, the middle school - - I think the reports that I looked at this morning, there were in evidence on the middle school program - - the middle school is not purely - - it is not solely related to integration. It is related also to what the educators tell us is improved educational practice, gives children a better education, even if there were no racial considerations.

Q But this is one of the steps you told us - -

A. But there is no doubt the West Hertel Middle School, in addition to all the middle schools, as planned, had, as a principal purpose, the achievement of racial integration in the school. I don't want to leave it that that was the only purpose.

Q I didn't say it was the only purpose, it was an avowed purpose?

A It was certainly an avowed purpose, yes.

Q And certainly an avowed act of the Board of Education to implement desegregation or integration, right?

A Yes, sir.

Q Now, if, in fact, the purpose was changed from a junior high school that was going to service the already crowded Riverside area to a Middle School Program, wherein a goodly number of blacks were going to be bused into the area and go to school there, just on the displacement theory, don't you then conclude that some students from the Riverside area were going to be denied admission to the middle school?

A I don't believe that is correct. I believe the school is large enough to accommodate the students from the feeder schools, as well as the students from the integration program.

Q Well, Riverside High School is ten to twelve, nine to twelve, is that right?

A. Nine to twelve, yes, sir.

Q. Junior high school is what?

A. It is seven, eight, nine.

Q. Seven, eight, nine?

A. Yes, sir.

Q. All right. The middle school is what?

A. Five through eight.

Q. Some of those classes don't coincide, do they?

A. There are different years, of course.

Q. So that when it was converted into a middle school, it couldn't serve, because of the fifth and sixth grades, it couldn't serve in the same capacity that it would have served the Riverside area or to help to alleviate the overcrowded conditions in the Riverside High School which is nine through twelve, to the same extent that it would have if it had been left a junior high school, right?

A. That is correct.

Q. Isn't it a fact that many of the people that protested the switch of the school from a junior high school to a middle school stated as their avowed purpose for protesting the switch that very reason?

A. That was the avowed basis of objection of many people, yes.

Q All right. It is your opinion that these objections are not meritorious, they were not made in good faith, is that right?

A. No, sir, I didn't say that at all.

MR. GRIFFIN: Just a minute. I would lika to interpose an objection. There has been extensive testimony on the motivation. I recall the Court's attention to that portion of the Stipulation 122C on Page 39, wherein the defendant in this case, Superintendent Manch, has declared the issue is integration, just as it was on the portable classrooms.

THE COURT: 122?

MR. GRIFFIN: Page 39.

THE COURT: We are talking about the middle school.

MR. GRIFFIN: We are talking about West Hertel and the Council's refusal to further fund.

MR. SCHWARTZ: There was no agreement as to

Paragraph B.

MR. GRIFFIN: I just think that at this point in this questioning, the part of the record ought to be focused on because of the nature of the evidence.

THE COURT: All right.

MR. GREGORY: I don't understand the objection.

THE COURT: Well, I think it is so we can get the whole business in contact. But I will overrule it. If it is an objection, I will overrule it and listen to the testimony.

THE WITNESS: If I recall your last question correctly, you were asking me to disregard that as a legitimate or a sincere basis for objection to the school. I said no, I never said that. That is a sincere basis for some objections, but it has nothing whatsoever to do with the basic issue - - We started out with my letter - - which was the Council's failure to implement the 4-4-4, the Middle

School Program, which I did not relate to West Hertel per se.

BY MR. GREGORY:

Q. All right. Now, to get on with the financing or the failure of the Council to finance any other middle schools, with the exception of the West Hertel Middle School, you had said early in your testimony that the sole function that the Common Council plays with respect to the construction of schools is to acquire the sites and supply the money after the Board has proposed the site and requested the money, is that correct, that is the Council's sole function, right?

A. Yes. Well, that function gets them involved with a lot of collateral things, like discussing the site. They don't merely approve it because we submit it, but yes, you are correct.

THE COURT: Mr. Gregory, I think it's important that you bring out the whole record, but it is also important that you keep in mind that you and the other defendants have entered into certain stipulations, and the Court certainly is going to consider the questioning of all of the witnesses, and consider all of the documents, and the Court is going to consider all of the evidence, you know, in making any judgment.

MR. GREGORY: I am aware of that. I think I do have the stipulations pretty well in mind. If there is something the Court is specifically referring to, maybe I can help to clear it up. I don't know, I don't know what it is you are referring to. If there is anything specific in the stipulation that I am disregarding, then I will be happy to address myself to it.

THE COURT: That is fine.

BY MR. GREGORY:

Q Now, we were at the point then where we were talking about your allegations that the Council committed an act of de jure segregation by failing to supply the money to build additional middle schools, right?

A Well, could I see my letter to Commissioner Nyquist? If I could refer to it - -

Q I will be happy to show it to you.

THE COURT: As I understand your attitude about de facto and de jure, Mr. Gardner, as I recall, you hesitated to use those terms before because many times it would be bound up with the facts and circumstances of a particular case. Simply because Mr. Gregory states the question in terms of de jure or de facto, if you do not want to answer the question that way, you are not obliged to, you may explain it in your own words.

THE WITNESS: Thank you. I wanted to look at the letter for that purpose, really.

BY MR. GREGORY:

Q Well, I am referring to Plaintiffs' Exhibit 107, which is an excerpt of the minutes from a Board meeting of March 22, 1972, and this was gone over by Mr. Griffin in the direct examination of the witness, and I am referring to Page 44 of the minutes. Mr. Gardner is addressing the Board preliminary to a vote on a particular subject. Do you recall that meeting, March 22, 1972?

A. Yes, sir, I do.

Q Do you remember testifying at great length yesterday about this meeting, is that right?

A. Yes, sir.

Q All right. Mr. Gardner says in here, "It has been a common assumption - - it is crossed out at the end - - that Buffalo, as with most northern cities, offers an illustration of de facto segregation. I'm not sure I agree with that. I think that we, for many years tolerated by indifference - - some other word - - by custom what the Courts, I think, someday will treat as de jure segregation." Now, you said that, right?

A. Yes, sir, I said that.

Q All right. You did mean, as you pointed out yesterday, that what you go on to speak about there are, in fact, acts of de jure segregation, as you understand it, is that correct?

A. Mr. Gregory, let me answer you in this fashion. I am trying to remember today that I am a witness in this chair and that I am not a lawyer in the role which I am filling. I believe what I said at the time is a view of the legal status of the acts in question. Since that time, I am not so sure that the law hasn't moved much farther than I then viewed it as being, and that some of the distinctions, which I found then between de facto and de jure, are no longer to be drawn. I'm not sure that really - - what I would prefer to say is actionable commission or omission and leave it to you and the other counsel and to the Court to characterize things. I don't think that is my role here.

Q. Well, I am not going to quarrel with your statement. That is what you are saying now, fine, I will accept it and refrain from using that expression with respect to your remarks then. But getting back to where we were with respect to the Council's failure, however anybody wants to define it, their failure to supply money to implement the middle school program, right?

A. Yes, sir.

Q You did allege for whatever - - however you might want to define it, you did define it as an act of the Council that in some way created, maintained or perpetuated a segregated school system, be it de facto or de jure, right?

A. Yes.

Q So we agree that the only function of the Council in this respect is to acquire the site as proposed by the School Board?

A. Yes, sir.

Q After due deliberation and consideration of the site?

A. Yes, sir.

Q And to supply the money for the construction through its capital expenditure program and your capital improvement programs, right?

A. Yes, sir, but not necessarily in that order. Yes.

Q You've got to acquire the site first before you build?

A. No - - You have to acquire the site before you build, but you don't have to have the site designated before you approve the bond money for the purpose.

Q All right. But, in any event, you have alleged that the Council failed to do anything, other than the middle school. What other sites did the Board, while you were a Board member, propose to the Council that they acquire for purposes of the middle school?

A. Other than West Hertel, you mean?

Q. Yes.

A. The only one that was specifically proposed for acquisition by the Council, by the City, was a site on Busti Avenue near present School 1.

Q. The only one?

A. That is correct.

Q. When was that proposed?

A. Late 1973, I would say.

Q. Late 1973, and the Council has taken no action with respect to acquiring that site or providing the funds for that particular school?

A. That is correct.

Q. That is not even a year ago?

A. That is correct. In addition to that specific site, over the years, over all these years, in each year the Board requested funds for the construction of middle schools. The Board, in our capital budget request to the City, for example, there was a proposal in the 1972-73 capital budget, which is the only one I have here, for a middle school in South Buffalo, and there was money requested for it.

Q To do what?

A. To build a middle school in South Buffalo. The Board had become convinced before I joined the Board that it was not a productive use of the Board's staff time and funds to seek out specific locations for middle schools and to spend Middle School Planning money until we had better reason to believe that the Council would in fact, provide the construction funds - -

Q So - -

A. - - because the Board was operating under the unanimous belief that such funds were not available, in view of the racial consequences of middle schools.

Q There you go again, there you go again. You don't ask for the money, you don't ask them to acquire any site, and you come up with the conclusion that it doesn't make any sense to do it because they are not going to do it because they don't want anything connected with integration. I really and truly resent that kind of conclusion, Mr. Gardner.

THE COURT: Mr. Gregory - -

THE WITNESS: I didn't accuse you of anything, Mr. Gregory.

THE COURT: Look, our job now is to ask questions. I will listen to your arguments later. I will give you as much time as you want to make arguments. Mr. Gardner has stated his conclusion. He said it was the unanimous belief of all of the members. There is a lot of questions you can ask him about how he arrived at it, if you desire. Let us take a break for ten minutes, and then we will return.

(Thereupon, the court was in recess at 3:15 p.m.)

* * * * * * * * * * * *

(PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 3:30 P.M.)

ARNOLD B. GARDNER, called as a witness on behalf of the Plaintiffs, having been previously duly sworn, resumed and testified further as follows:

THE COURT: All right, Mr. Gregory.

BY MR. GREGORY:

Q We were at the point where you were stating that looking at the capital expenditure program for the Board of Education, and how they had requested money for the middle schools, is that right?

A Yes, sir.

Q But again, specifically, the question I asked you is that aside from what you have testified to relative to a middle school in the Busti Avenue region of Buffalo, the lower west side, the waterfront area, let me ask you, did you say that the Board did submit this as a proposed site to the Council for acquisition?

A Yes, sir.

Q All right. That was late in the year 1973, right?

A Yes, sir.

Q So that at least no more than a year has gone by since that was formally proposed to the Council for acquisition, right?

A. Yes, sir.

Q. All right. Aside from that site, has there been any other formal proposals by the Board to the Council to acquire sites for middle schools?

A. None, to my knowledge.

Q. Well, then could you explain to me then, your remark that the Council has failed to provide funds for the acquisition and construction of middle schools, and in explaining that, I want you to take into consideration that the West Hertel Middle School was ultimately funded and completed, and also that the other only proposed site was the one that you referred to in the lower west side area, in the region of Busti Avenue, less than a year has gone by since that was proposed to the Council, in what other instances did the Council fail to acquire and construct middle schools proposed by the Board?

A. Well, you asked me two questions. I really don't want to quibble. The question you asked me was on what did I base my statement.

Q. No, I didn't ask you that, I asked for examples.

A. I don't understand what you are asking me.

Q. I will ask the question again. You commented in your remarks in the Board meeting and also in substance in a letter to the Commissioner, citing as an act of segregation by the Council of the City of Buffalo their failure to supply money for the construction of middle schools, which had, as one of their avowed purposes the implementation of an integration program, is that a correct statement?

A. Yes, sir.

Q. All right. Now, West Hertel is a middle school that is now in existence, is that correct?

A. Yes, sir.

Q. And except for some clamor, some furor over the authorization of a $900,000 bond issue that was necessary to complete the construction of this school, the Council did, in fact, acquire and finish the construction to completion of that particular middle school, did they not?

A. Yes, sir.

THE COURT: Excuse me. It seems to me that this is the point I was making before. You say, "except for." Now, your stipulation - - I think we have to take this step by step - - your stipulation talks about the middle school, talks about the West Hertel Middle School, and in any lawsuit, of course, you are entitled to ask a question, you are entitled to ask the witness to take certain things into account. But here, I think the case is so complicated that when you ask a question like that, you have already made a stipulation of fact that you must call the witness's attention to the other information which is set forth, and, that is, that in 121, the Board decided to make West Hertel School into an integrated middle school in the Riverside area. It then goes on, 121(b): "Community opposition in the Riverside area was high." 122(a) talks about the events of July 25, 1968, the West Hertel School was approximately half to three quarters completed. In other words, you know, you are entitled to ask Mr. Gardner what other information, what other impact, what other thinking went into the construction of the West Hertel School or any other school. But I don't think you can, keeping in mind all the background, you can't say, 'except for some clamor' and then refer to distances and travel, and so forth. Go ahead, next question.

BY MR. GREGORY:

Q In any event, that school was built, right?

A Yes.

Q It was completed?

A Yes, sir, it was.

Q You testified that the Board formally proposed to the Common Council that they acquire and supply funds, acquire the site and proceed to supply funds for the construction of another middle school somewhere in the lower west side, is that correct?

A Yes, sir.

Q And we have agreed that nothing to this date has been done, right?

A That's correct.

Q If my recollection is correct with respect to the dates, your letter and your statement, with reference to these acts of the Council or the failure of the Council to act, preceded the proposal with respect to this middle school on the west side, right?

A The specific proposal, yes.

Q Well, you are not insinuating that the Common Council can act before you propose a site, are your?

A No, I wasn't insinuating anything. I was saying - -

Q You said a specific proposal.

A Yes. Does proposal mean proposal to build or proposal submitted to the Council? The School Board propose locations in general terms for middle schools at various places throughout the City of Buffalo, and had had them prior to my appearing on the Board, and it was after the Common Council failed repeatedly to appropriate monies in any way with the capital budget request of the Board of Education for year after year that the Board abandoned any attempt to find particular locations within the general parts of the City, in which it did indeed have proposals to build middle schools.

Q But you are not trying to tell me that the Council should proceed on its own to acquire a site for the Board without the Board recommending it to them?

A. I did not say that nor would I.

Q Getting back to my question. Your letter to Dr. Nyquist and your statement before the Board in Exhibit 107 sets forth that the Common Council failed to supply funds for the construction of the middle schools, isn't that correct?

A. Yes, sir.

Q All right. Now, I am asking you in what instances after the Board performed its statutory function, namely, to propose a site to the Common Council for acquisition for the stated purpose of constructing a middle school, did the Common Council refuse to supply the funds, as you alleged in your letter to Dr. Nyquist, and as you alleged in the Board meeting which is reflected in Exhibit 107?

A. There is no procedure - - I am going to answer your question if you will permit me - - There is no procedure which requires the Board to designate a particular site before requesting construction money for middle schools, nor did the Board do so.

Q That is your answer to my question?

A. Yes, sir.

MR. GREGORY: Would you read my question back? I don't mean to be quarrelsome, but if I have to, I am going to raise an objection that the answer is not responsive to my question.

THE COURT: All right. Well, either ask it over or have Mr. Noel read it back.

MR. GREGORY: Would you please read it again?

(Thereupon, the reporter read as follows: "Q Now, I am asking you in what instances after the Board performed its statutory function, namely, to propose a site to the Common Council for acquisition for the stated purpose of constructing a middle school, did the Common Council refuse to supply the funds, as you alleged in your letter to Dr. Nyquist, and as you alleged in the Board meeting which is reflected in Exhibit 107?

A. There is no procedure - - I am

going to answer your question if you will permit me - - There is no procedure which requires the Board to designate a particular site before requesting construction money for middle schools, nor did the Board do so.")

THE COURT: Well, it appears to me that that is sort of going at this each and every way. You, Mr. Gardner, are reciting the history of what happened, experience, and Mr. Gregory, you want to find out whether or not there were other times when the Council turned down the Board's application for middle schools. I think that by implication, the answer is that no formal turndown ever came about because the Board did not apply again, and they did not apply again, according to Mr. Gardner, because of the unhappy experience in the middle schools.

THE WITNESS: Your Honor, my problem is this. The Board did not request an acquisition of a particular site, other than the west side site last year. But the Board did request the allocation of monies to build middle schools. The Board was under the impression that it was not required to designate the particular site in order to ask for the money, but before using the money appropriated, it would then have to do it. The Board concluded, after a period of years of requesting middle school money and not getting any middle school money, that it was a waste of effort to find a site to submit to the Council until it had better reason to believe that the Council would appropriate funds for middle school construction.

THE COURT: If I understand that, on the middle schools, the Board, would they need the appropriation? They wouldn't be able to know what the whole school was going to cost, but the request made to the Council was that 'we would like you to allocate a sum in the budget for middle schools, and then if you do that, we will look for sites.' Before there is any - - they would have to come back to the Council anyway before you could get site acquisition and other authorization, as far as design of the school and final construction?

THE WITNESS: That is correct, your Honor, and the Board did have areas of the City designated within which it would seek to build middle schools, although not specific sites in those areas. Further, when the Board would make a request for capital budget money for middle school construction, it would make a request based upon what it estimated to be the cost of building a middle school of a certain size at that point in time.

BY MR. GREGORY:

Q On the basis of that kind of a request, you and the Board expected the Council to appropriate the money?

A. Yes, sir.

Q To just have you willy-nilly do what you would with it?

A. We expected them to appropriate the money. It doesn't follow that that would leave the Board to do willy-nilly what it wanted to do with it. If the Board couldn't build the school until it had a site, and it couldn't get a site except through the Council, and the Board took the allocation of capital monies- or the failure to allocate capital monies as an indication of the willingness of the Council over a period of years to make it possible for the Board to construct middle schools.

Q You see, there again is what I don't understand, how you arrive at the conclusion - - let me finish, please - - how you arrive at the conclusion that the Council wouldn't give you this money, you never followed the proper procedure, did you?

A We certainly did, I have been talking about it for fifteen minutes. You just choose not to accept my answer.

THE COURT: That is an argumentative question, they didn't follow the proper procedure. If it isn't the proper procedure, you have a way of showing me what the proper procedure is. I think this area certainly has been exhausted. Can we go on to something else, please?

MR. GREGORY: All right.

BY MR. GREGORY:

Q The fifth allegation that you made, both to the Commissioner in your letter and on the floor of the meeting, which was with reference to the failure of the Common Council to acquire Bishop Ryan High School for use by the Buffalo Public School Systems, is that correct?

A Yes, sir.

Q All right. When did this occur?

A 1971.

Q All right. And it came to your attention sometime in 1971 that the diocese of the City of Buffalo was abandoning the use of Bishop Ryan High School, is that correct?

A. Yes.

Q If the proper amount of money was paid by the City, Bishop Ryan High School could be had for school purposes, right?

A. Yes.

Q Would you like to tell us how much that amount of money was?

A. For purchase, the original asking price was one million dollars. Subsequently, a lease discussion took place. I don't know what the rental proposed was.

Q In any event, the asking price for the sale of that -- for the purchase of that building from the diocese was one million dollars?

A. Yes, sir.

Q All right. And you made a tour of that building, did you not?

A. Yes, I went out to that building.

Q How would you describe the condition?

A. Well, it was an old building. There were two parts to the building, one newer, one older. It is not - - It wasn't a new building. It had been a school building once and abandoned as a school building.

Q. By whom?

A. By the School Board.

Q. By the Buffalo Board of Education?

A. Yes. I'm not sure if it was abandoned because of age or something better was built there.

Q. 69 was built down the street?

A. Yes, in that vicinity. But the building isn't a new building. It was a usable building, but it would require some work.

Q. How much work?

A. I don't recall.

Q. You had recommended to the Council that they acquire the building, right?

A. Not for the price of a million dollars. We recommended to the Council that they enter into negotiations, and the diocese had indicated that the price could be subject to the negotiations, and subsequently that the rent could be.

Q. Before you recommended the acquisition of the building, I am sure you sent your engineers to look at the building?

A. The Plant Department went down and went through it, of course.

Q. Did they give the Board any estimate as to what it would cost to put that particular plant into shape for the use of school children?

A. They may have, I don't recall the dollars at this time though.

Q. Were there toilet facilities in the building when you went through it?

A. I believe so, but I don't recall. I assume there were. It had been operated as a school by the diocese, I assume they had plumbing.

Q. You are not aware of what the diocese did after they abandoned the building?

A. No.

Q. If the plumbing supplies had been removed, the plumbing equipment and lavatories and all of those things had, in fact, been removed from the building, you are not aware of that, are you?

A. I looked at it at one time. I don't recall the physical condition of the building at this time.

THE COURT: Mr. Gregory, Mr. Gardner isn't an engineer. If this is the point, and you want to get it in the proof, my only suggestion to you is you can do it in a much better and much clearer fashion by bringing in the facts. I am sure that engineering studies were made by the Board, and some appraisals, perhaps, were made by somebody, and you could make that part of the record.

MR. GREGORY: Your Honor, I honestly don't mean to be caustic, but it doesn't take an engineer to know whether there is a toilet there or not.

THE COURT: Just a minute. In that context the Stipulation 129(a) and (b): In 1971, the Board considered purchasing Bishop Ryan High School in order to reduce overcrowding at South Park High School and Southside Junior High School: (b): If purchase, Bishop Ryan could have contributed to reducing racial isolation and improved integration." It leaves open all the questions about value and engineering problems, all those things.

MR. GREGORY: I have no dispute with that stipulation.

THE COURT: Very well.

BY MR. GREGORY:

Q We are back to the point about the school; the asking price was a million dollars, as far as you know, that is the last price that you know anything about?

A I don't think there was really ever a negotiation.

Q This is the only price you know about?

A Yes, sir, that is correct.

Q As far as you know, some rehabilitation of the building, without getting into specifics, some rehabilitation of the building had to be performed before it could be used?

A That is correct.

Q At some expense?

A Yes, sir, that is correct.

Q Okay. Now, you testified earlier that there was again some - - Yesterday, you testified there was some clamor from the community relative to using that particular building for school purposes, right?

A. Yes, sir. Well, there was - - I don't recall if I had described clamor from the community, there was some community interest, yes.

Q. And if I understand the tenor of your testimony yesterday, this resentment of the community, or whatever words you want to use, was racist in nature, right?

A. I believe that it was essentially racist, yes.

Q. All right. Now, this is your conclusion, right?

A. Yes, sir.

Q. I would like to know from what facts you arrived at this conclusion?

A. I arrived at that conclusion based upon the correspondence that I had received from members of the community opposing Bishop Ryan.

Q. Could you be more specific, as far as the correspondence is concerned?

A. I received a series of letters, as I presume other Board members did also, from members of the community, opposing the acquisition of Bishop Ryan High School because of stated objections to the influx of black pupils which was anticipated to occur.

Q This was stated in these letters?

A. That is my recollection, either directly or - -
That is my recollection.

THE COURT: Well now, Mr. Gardner, I don't know whether you finished, but before we get into the details of the letters, you were starting to explain, Mr. Gardner, how you came to the judgment that opposition to the school was racially motivated. Was there anything else in addition to the letters?

THE WITNESS: Yes.

THE COURT: Would you explain that, please?

THE WITNESS: Yes. In addition to that, there was the presentation at, as I recall it, a conference meeting of the Board of Education, not a regular meeting, I think a conference meeting as a result of the presentations that were made on this subject by members of the community. I came to it as a result of discussions that I had at a meeting before the Finance Committee and - - the Finance Committee of the Common Council and the Board of Education, which took place sometime late in 1971, I believe, and as a result of discussions that I had with a variety of people in and around City Hall, and I might say that this was discussed by the Board Members on several occasions, and the view that I have expressed was certainly the concensus, if not the unanimous view, of the members of the Board of Education as expressed to me and to others.

BY MR. GREGORY:

Q If I understand you correctly, you attributed four different things that led you to conclude that the decision by the Common Council not to purchase Bishop Ryan High School was racially motivated?

A In large part, yes.

Q In large part.

A In large part because at the price at which the building was offered, I must say in all fairness that I would not have wanted the City to acquire it because I considered the price to be excessive, but the City never entered into negotiations with the Diocese on the price.

Q Did you or members of the Board attempt to negotiate the price?

A We are not permitted to do so. That is a matter for the City Council and the City Comptroller's office. We have no authority to do so.

Q When you say you have no authority to do so, you have no legal authority to enter into a contract, but did you make any attempts to get the Diocese down?

A I discussed the subject with counsel for the Diocese on one occasion, others may have done so as well.

Q What were the results of this discussion?

A I was satisfied that the price was negotiable.

Q To what extent?

A I did not pursue it to that extent, Mr. Gregory.

Q All right, let's get more specific with reference to these four different things. The letters that you received, they were from members of that particular community that were intended to be serviced by this school?

A. They were from people who described themselves as residents of that general part of the City.

Q. That being the Clinton Street area somewhere between Bailey and South Ogden, right?

A. We marked it yesterday. Near School 69 on the map.

Q. Do you recall how many letters you received?

A. No, sir, I don't. I didn't take the letters as the sole criteria in the matter.

Q. I didn't ask you if you took the letters as the sole criteria in the matter.

A. I don't recall.

Q. You don't have any idea whatever?

A. I could give you an estimate, perhaps a half dozen, eight, ten.

Q. All right. You started to say something about the context of the letters spoke in terms of racism, is that correct?

A. I would be glad to see if I could locate the letters. I may still have them. I kept most of my Board of

Education mail, not all of it, but I would be glad to locate them, if I can.

Q In the event that you did not keep them, and they are not available, - -

A. I will look for them.

Q - - do you think you could recall whether there was any direct - - in these approximately half dozen letters - - whether there was any real direct remarks toward racism?

A. You are asking me to recall something specifically three years ago. I concluded from reading the correspondence, those letters, and my recollection is that they contain racial slurs and epithets.

Q You concluded?

A. That is my recollection today.

Q I mean your recollection is that you concluded?

A. My recollection is that I concluded from what was said, that the letters contained racial slurs and epithets, yes.

Q In other words - - I am trying to clarify this - - would your answer be different if the letter had directly said we don't want blacks in this community?

A. That is the point, I can't remember what was said --

Q Fine.

A - - in those letters.

Q Now, you have also said that you presumed other Board members received the same type letter, right?

A Yes, sir. Generally speaking, that was the case, when one member would receive that type of letter, it would go to others as well. I don't know it for a fact, no, sir.

Q The second thing you said was as a result of conference meetings, not regular Board meetings?

A It may have been at a regular Board meeting, but I recall a conference meeting at which this subject was discussed. I recall that Councilman Higgins came down to argue for the school, he was always concerned about overcrowding down in that part of the City, and I recall other people coming to support it, and I remember people coming from the area around the school to oppose it.

Q At conference meetings?

A At a conference meeting, yes.

Q I thought - - If I am wrong, correct me - - I thought conference meetings were closed to the public?

A We opened them for quite a while. When we had an item that was hotly contested, we often allowed people to come in and discuss it at a conference meeting. It would take too long at a regular meeting. It may have also discussed at a regular Board meeting, but I recall a conference on it.

Q From the expression of people at these various meetings - - I am certain at this particular time you can't remember how many and who - - you concluded that the people in that community did not want the school there, and they did not want it there because of racial reasons?

A. That was one of the factors that led me to my conclusion, as expressed in the letter.

Q By the way, you must have known what the potential capacity of the school after it had been renovated would have been, could you tell us?

A. I think it was four hundred and twenty-five students.

Q Four hundred and twenty-five students. You said there had been some tacit agreement that you were not going to increase the racial composition of the school over and above what it was in South Park, right?

A. What I said was that when the Board met with the

Finance Committee of the Council late in 1971, when they were considering this acquisition, we were pressed hard for a commitment as to what would be the composition of the students at the Bishop Ryan building if it were acquired, and that we stated that it would be the same as the 9th Grade would be at South Park.

Q If I understand the situation correctly, Councilman Higgins was one of the ones really pressing for continuing the racial composition of South Park High School?

A Councilman Higgins was pressing to acquire the Bishop Ryan building. I think - - my recollection is he was trying to reassure people who were concerned about the racial composition of Bishop Ryan that it would be the same thing as South Park.

Q He was also concerned with relieving the overcrowded conditions, the admitted overcrowded conditions at South Park High School?

A And at Southside, sure.

Q If, in fact, the City - - If, in fact, the Council acquiesced to your request and purchased that particular building for the purpose of relieving the overcrowding at South Park High School to the extent of possibly four hundred and twenty-five or four hundred and fifty students, as you have testified to, and children other than from the South Park area were bused in to that area, then the avowed purpose of the acquisition of the school, namely, to relieve the overcrowding at South Park High School, wouldn't have been accomplished, would it?

A. You know, I really - - I'm not sure if I understand your question.

Q. Well, let me put it to you this way. The primary purpose for acquiring this particular site to be used as a school within the school system of the City of Buffalo was to relieve the overcrowded conditions at South Park High School, is that right?

A. Yes, sir.

Q. Okay. Now, at that particular time, the racial composition of students at South Park High was ninety per cent white and ten per cent black?

A. That sounds about right.

Q. Now, Councilman Higgins was pressing for the acquisition of this site for that avowed purpose, was he not, to relieve the overcrowding in South Park

High School?

A. That is correct.

Q. He further pushed for maintenance of the racial composition at South Park, at this new facility, did he not?

A. I don't know that he pushed for it. I think the answer is that he was trying to satisfy people that the racial composition would be no more black than it was at South Park. I don't think he was pushing for any particular racial mix.

THE COURT: You know, Mr. Gregory, and I know - - I don't know whether Mr. Gardner knows - - that the councilmanic district that Mr. Higgins represents does not cover the area in which the high school, the Bishop Ryan High School was located. His area is south of the green line there, and includes the School Districts 26, 27, 70, 72, 28, 67 and 29.

MR. GREGORY: Also the School District South Park High School.

THE COURT: Yes, and it would include Southside

Junior High School.

MR. GREGORY: Right.

THE COURT: All right. As far as speaking for the people right in the area of 69, he doesn't represent that area.

MR. GREGORY: Of course not. I'm not professing that. What I am saying is that his constituents whose children attend South Park High were complaining to him about the overcrowded condition of South Park High, which lies smack in the center of his district.

THE COURT: I think we all agree to that. Now, as far as the number game is concerned, I think it is obvious that it all would depend upon where the students came from. That indeed, if the School Board, if they bused in a large number of pupils from the inner city out to Bishop Ryan, then it would not relieve the conditions of overcrowding at South Park. However, if they move some of the

Southside Junior High Students into the Bishop Ryan School, near 69, and they moved a few from the central city, then it would, in effect, relieve some of the overcrowding at South Park, and at the same time, it may have assisted somewhat in integrating the school. I suppose it all depends upon how they drew the lines, and a number of other factors. Is there anything else to be said on this, Mr. Gardner?

THE WITNESS: Only that when we had our discussion at the Finance Committee - - in response to the question - - the Board made it clear that if we were - - If we acquired Bishop Ryan, we were not going to run it as a substantially all black school and that we would start off and operate that school with a racial composition substantially equivalent to what the 9th Grade would have been at South Park

High School, and there was considerable discussion about that point, largely with the councilmen whose districts that school does include.

BY MR. GREGORY:

Q Which school?

A. Bishop Ryan.

Q Did you acquiesce in that agreement?

A. There was no agreement. What agreement?

Q About maintaining the racial composition?

A. That was the point of view that we expressed to the membership of the Finance Committee. There was no agreement, that was the presentation to the Finance Committee.

Q Was that your feeling?

A. My personal feeling?

Q Yes.

A. Yes, sir, it was.

Q Okay. So that you were of the opinion at that particular time that if this school was acquired, the racial composition of ten per cent black and approximately ninety per cent white was satisfactory to you?

A. Until such time as - -

MR. GRIFFIN: If the Court please, I have been silent here, but I would like to make an objection for the record relative to this entire area of inquiry. We offered proof - - sometimes we lose sight - - this witness is employed - - I shouldn't say employed, was a member of the Defendant Board of Education, which Mr. Gregory appears in this case, and we offered proof that the City Defendants refused to acquire this site and that that refusal was an act that further retarded. I think it is somewhat immaterial and irrelevant, and we have been at it long, whether it ended up being fifteen per cent reflecting South Park, whether they have a meaningful integration program, or whatever it is, this is all quite collateral and extraneous to the central issue, and whether this witness eventually conceded to pressures that would have had acquisition of this on the basis of a racial percentage that would reflect South Park, I think is all beside the point.

THE COURT: I think we have heard enough of this.

THE WITNESS: May I clarify one thing? I don't want to prolong it, but I do want to say this. That the Board, and I was personally in agreement with this, was willing to agree that the composition of Bishop Ryan would be the same or appreciably the same as the composition of South Park, but we were not willing to say we were forever satisfied with the then race percentages at South Park. That is a very different thing. As a matter of fact, my recollection is that somebody asked us about that, would we agree to that as a permanent relationship, and no such agreement was given by the Board, nor did we get the building.

BY MR. GREGORY:

Q After it's over and done with, after your testimony on direct examination and whatever testimony I have attempted to elicit from you here, it is still your considered judgment that the Common Council refused to acquire this site because of racial overtones? That was the primary consideration, that is your testimony?

A Yes, sir, that was and remains my opinion.

Q All right. All of the other things we have discussed, the cost, the condition of the building, the need to relieve the overcrowding at South Park High, all of these factors, as far as you are concerned, are just subordinate to the other consideration, namely, race?

A Mr. Gregory, I'm not paranoid on this race issue. I don't think everything else is related to race. I know that the Council didn't enter into negotiations- - When you talk about price and the terms, that would be more influential had a negotiation taken place and the Diocese had been willing to reduce its figure, but they never got to that point. I am suggesting, in my opinion, the reason why they did not get to that stage of negotiation.

THE COURT: All right. Mr. Gregory, I think we ought to go on to something else.

MR. GREGORY: All right.

BY MR. GREGORY:

Q Now, one of the last things that you referred to in your communication and, I think, in the minutes of the Board, was the historical portable classroom controversy. This, in your words, was another example of an affirmative act on the part of the Common Council towards segregation, right?

A. Yes, sir.

Q Okay. If their opposition - - If you are correct and their opposition to the portable classroom was motivated by racism, and this is what you have concluded, right?

A. Opposition to further integration, whether it was racism or not. I don't know.

Q Isn't it then true that the proposal by the Board of

Education to provide portable classrooms is just the opposite, an affirmative measure toward implementing the integration of the schools?

A. Yes, sir, it was.

Q. So that is another example of the step that the Board took to implement integration, right?

A. That is an example, yes, sir.

Q. Okay. Let's get down to it. How did the Board officially oppose the portable classroom?

A. How did the Board officially oppose the portable classroom?

Q. I'm sorry, the Council, I beg your pardon.

A. Well, as you know, it was before my time on the Board, but I am familiar with what happened. They enacted a local ordinance, which stated briefly, I think, provided conditions that made it impossible to install the portable classrooms as a part of the permanent buildings because of the type of construction.

Q. You, yourself, were satisfied with the type of construction that was going into this portable classroom?

A. I was never called upon to be satisfied or dissatisfied.

Q You were not on the Board?

A I was not on the Board.

Q All right. Now, I take it then because of the statement that you made both orally at the Board meeting and in your letter, I take it that you concluded from the resolution adopted by the Council that this was motivated by their reluctance to help integrate the schools?

A Mr. Gregory, whether - - yes, I concluded that - - whether I'm right or wrong in my letter and my statement to the Board at the March 22nd meeting, it turns on whether the facts are what I believe them to be or not. I couldn't create the facts, I can only comment on them, as I saw them and believe them to be.

Q What is the fact?

MR. GRIFFIN: If the Court please, this matter was tried in the State court, and there was evidence in the bargain that the sole and exclusive reason for passing this arbitrary and capricious, unconstitutional zoning thing, was because of racial motivation.

MR. GREGORY: That isn't true, that is not a true statement.

THE COURT: Just a minute. We can easily find out. The proceedings, are they part of the record?

MR. GREGORY: Which proceedings, the Council proceedings?

THE COURT: No, no, the State action.

MR. GRIFFIN: Well, it is referred to in the stipulation, yes.

THE COURT: What paragraph? We need an index.

MR. SCHWARTZ: It is on Page 37. Page 36 through 38 is the whole story of the portable classroom and the Common Council's ordinance.

THE COURT: Page 35, portable classrooms, Number 112: "On May 8, 1968, the Buffalo Board of Education approved the creation of twenty-four portable classrooms to be constructed at twelve predominantly white schools in order to provide spaces for some four hundred fifty nonwhite students from Clinton and possibly Woodlawn Junior High Schools and to improve integration; Board Members Parlato and Joseph E. Murphy dissented. The action was taken at a public meeting in which a large number of people attended and strongly opposed the Board's action." 113(a): "Within a few days, May 14, 1968, former Board Member Alfreda Slominski proposed and the Council adopted a resolution directing the Corporation Counsel to prepare the necessary legislation to prohibit the use of portable classrooms, even though said Corporation Counsel advised the Common Council that in his opinion, it had no power to enact such legislation."

MR. GRIFFIN: I don't like to interrupt, but 116(b), the veto message of the then

Mayor Frank A. Sedita, states: "The said ordinance is discriminatory in purpose, nature, and object, in that it is designed and intended, primarily to hinder the Board of Education in maintaining and operating a function and facility of the City School System. This design and intent is a matter of public knowledge." If Mr. Gregory wants to try that whole case, as to whether that was racially motivated, I would welcome the opportunity. But I think it is a waste of time, and I am surprised that we are now embarking upon an area of inquiry which suggests that building ordinance, declared unconstitutional, subject of the veto message, was not one of the rankest acts of racist legislation in the history of the City of Buffalo. We are prepared to show that in spades. But, frankly, I am surprised that we are asked to do it.

THE COURT: Although you may pull one client out of the well, you are digging a deeper hole for the other.

MR. GREGORY: I don't think so.

THE COURT: The Council enacted the resolution.

MR. GREGORY: Right.

THE COURT: Just a minute, Mr. Gregory. 118: "The Board of Education challenged the constitutionality of the ordinance," and then there was the decision in the Supreme Court which was affirmed by the Fourth Department at 32 Appellate Division 2d 98.

MR. GREGORY: I'm aware of that.

THE COURT: Was there anything in the decision, Mr. Griffin, did the Court decision talk about this at all?

MR. GRIFFIN: I don't know, your Honor, it has been years since I have read it.

MR. GREGORY: I know.

MR. GRIFFIN: I would expect the grounds expressed by the Court were not in terms of race.

MR. GREGORY: Thank you.

THE COURT: Mr. Gregory, we have the stipulation - -

MR. GREGORY: The stipulation, your Honor, as I read it, I respectfully suggest the stipulation has nothing to do and in no way touches upon the questions I am asking Mr. Gardner. There is nothing in the stipulation that this indicates anything but that the Council's design was, in fact, motivated by racism. This is what I've been trying to acknowledge all day with this witness.

MR. SCHWARTZ: Your Honor - -

MR. GREGORY: Just a minute, would you please?

THE COURT: Mr. Gregory, take one thing at a time. What do you want to ask Mr. Gardner?

MR. GREGORY: I am primarily interested in asking Mr. Gardner how and why he came to the conclusion that this ordinance adopted by the Common Council, attempting to interfere with the School Board function, was motivated by racism. I don't see anything in the stipulation that I agreed to that indicates or agrees that was the motive of the Common Council. I think, under the circumstances, that I'm free to address myself to that issue.

THE COURT: We do have 116(b) that Mr. Griffin just called to our attention, the statement of Mayor Sedita in his veto message: "The said ordinance is discriminatory in purpose, nature, and object, in that it is designed and in that it is designed and intended, primarily to hinder the Board of Education in maintaining and operating a function and facility of the City School System."

MR. GREGORY: Your Honor, I helped to draft that veto, and I can tell the Court specifically what the word "discriminatory" means, and what the whole case dwelt on. It was an arbitrary and capricious act on the part of the Council, unfounded in law, because it was strictly and solely an educational matter which is the sole concern of the State of New York, and that is what the whole case turned on from start to finish, simply that the Council was advised by Corporation Counsel Manguso, when asked to draw the amendment, that they were specifically told they had no business, no business interfering with the function of the School Board, namely, to construct school buildings, this was primarily and solely a function of the State.

THE COURT: Mr. Gregory, first, no school in the City of Buffalo could be constructed in violation of the various ordinances of the City, could it?

MR. GREGORY: No. Well, I'm not so sure of that. In any event, whether the State is subject to our fire ordinances, that is another question.

THE COURT: If you want to ask Mr. Gardner a question, would you please ask a question and if you don't like the answer, ask another question.

MR. GREGORY: Your Honor, aren't I entitled to responsive answers from the witness?

THE COURT: Please. You see, a responsive answer isn't always the response that the attorney likes. Quite often it is not. So if you don't like the answer, you can ask another question.

MR. SCHWARTZ: May I be heard for a second? I would like to direct the Court's attention to Page 36, Paragraph 113(c) of the stipulation which relates that "Councilman Edward V. Regan and others noted in debate that the underlying issue was racial integration of the schools."

MR. GREGORY: That is Councilman Regan's opinion, the same as we are discussing Mr. Gardner's opinion. Councilman Regan's opinion isn't the opinion of the Common Council.

MR. SCHWARTZ: I don't want to argue, Mr. Gregory.

THE COURT: Everyone here is becoming a witness in this case, and I am not going to become a witness. But it seems to me that a lot of these things can be easily found out by the records of the proceedings, and the statements made in the Council, but the statements made in the press, and by various individuals interested in this particular situation. All right. If you want to, ask Mr. Gardner.

BY MR. GREGORY:

Q I have forgotten the last question I asked. But this was one of the examples you cited to the Commissioner and to whoever was there to listen to you at that Board meeting, right?

A. Yes, sir.

Q Now, this certainly isn't anything specifically in the resolution adopted by the Common Council that says anything about race?

A. I never read it.

THE COURT: I think that is obvious.

THE WITNESS: My point is that I don't know, I never read it, I can't say.

THE COURT: It is right here in your stipulation, the ordinance.

MR. GREGORY: Okay.

BY MR. GREGORY:

Q Do you know of any statement made by any proponent on the Council of the resolution that said this resolution is being adopted to hinder integration in the schools?

A. Any statement of that kind made publicly?

Q Yes, on the Council floor.

THE COURT: Why don't you get down to it, Mr. Gregory. Do you know of any?

MR. GREGORY: I don't know of any.

THE COURT: Then it won't be in the record, and Mr. Gardner, evidently, doesn't know of any either. Let's ask questions that are going to move the inquiry forward a bit.

BY MR. GREGORY:

Q Well, again I will ask you the same question, from what facts did you come to the conclusion that the adoption of this resolution by the Council was racially motivated? I just don't know, your Honor, if you will forgive me, I don't know how else to ask the question.

THE COURT: Mr. Gregory, I am going to say this and let you go on. It seems absolutely clear from the Stipulation 112(a) says, "On May 8, 1968, the Buffalo Board of Education approved the creation of twenty-four portable classrooms to be constructed at twelve predominantly white schools in order to provide spaces for some four hundred fifty nonwhite students from Clinton and possibly Woodlawn Junior High Schools and to improve integration; Board Members Parlato and Joseph E. Murphy dissented." And then within a few days, the Council adopted this new resolution, and it finally enacted the ordinance a month later, which would prohibit the use of these portable classrooms. Very well, go ahead, ask your question.

THE WITNESS: Mr. Gregory, I said - - I made the remark orally at the meeting and in my letter because I believed it was true. I do not have the basis of proving it in a court of law, but I formed my opinion, based upon which I made the statement, from my familiarity with the issue as a citizen, although not a Board member at the time of the issue, and from having followed it in the press, and from having discussed it after I became a Board member with Dr. Manch and with staff and other persons, and on one occasion, I recall with Judge Manguso, the Corporation Counsel. As a result of all that, I formed the opinion which I expressed to the Commissioner.

BY MR. GREGORY:

Q Okay. In any event, the classrooms did go into existence?

A Yes, sir, they did.

Q And today, although we expended a good deal of money on them, today they are relatively not in use?

A Some of them are in use, some of them are just gone.

Q You said six of them?

A I think it's about six or roughly so.

Q Now, not belaboring the point, I will go on to another subject in a moment, an avowed purpose of these things was, in fact, to bus in black students to that particular school, right?

A Yes, sir.

Q They were not going to be housed in that particular classroom, were they, the portable classroom?

A. They - - you mean - -

Q. I mean all of them?

A. I don't follow you.

Q. The portable classrooms would accommodate how many students, as you recall?

A. Forty or something like that.

Q. So that meant that a school then would have room, wherever one of these portable classrooms were, would have room for forty additional students, all black, right?

A. It wouldn't be all black students in the one classroom, of course.

Q. Well, I mean - -

A. You mean additional students?

Q. In the school.

THE COURT: Mr. Gregory, let's say the school is a 1-8 school, that the black students who would come in - - Say a 7 to 9 school, the black students would come in and some of them are in 7, some 8, some 9, and this classroom would be used for English 7 or

English 8, so there would be a mix in the classroom of black and white.

MR. GREGORY: I appreciate that fact. That is where I am going, that is the point I am making.

BY MR. GREGORY:

Q Now, the point I was going to make is that this would make the school, the capacity of the school approximately thirty-five to forty students larger, would it not?

A Approximately, yes.

Q There was absolutely no intent on the part of the Board of brining anything but black students in to fill up that capacity, right, that additional capacity?

A That is what it was provided for.

Q That was the avowed purpose?

A Yes, sir.

Q Certainly, it wasn't the position of the Board to put those additional thirty-five black students, which this portable classroom afforded an additional opportunity for to come to that school, in that portable classroom, was it?

A. Together, you mean?

Q. Yes.

A. Of course not.

Q. There was going to be a mix of all different grades?

A. Yes.

Q. So that it meant that certain white students from that particular district would have had to go into that classroom, right?

A. Yes, sir.

Q. And isn't it a fact that there was great voiced opposition to the use of these things for a number of safety reasons, and what have you, is that not a fact?

A. Some people voiced objection because of fears of safety, I am sure that is correct.

Q. Inadequacy of the facility itself?

A. I am sure some people expressed that opinion, yes.

Q. And do you feel that these different views and opinions as to why various people in the community and various councilmen were opposed to the use of these portable classrooms were not made in good faith?

A. Mr. Gregory, you and I know that has nothing to do with the councilmanic opposition to the portable classroom.

Q I don't know any such thing.

A I know it and I believe it.

Q So what you are saying is that these oppositions were not made in good faith, in your opinion?

A I am not saying that some people, unfamiliar with the nature of the portable classroom, the construction, and so forth, might not have been apprehensive at first. I am saying that the City ordinance and the litigation and passage of the ordinance over the veto and the whole trauma that occurred, had nothing to do with the physical safety of the structure.

Q That is your opinion?

A Yes. I can only give my opinion.

MR. GREGORY: There was on exhibit that was here, a letter from Dr. Nyquist to the Board.

THE COURT: Could you do a little better, Mr. Gregory?

MR. GREGORY: It is Exhibit 12, your Honor.

MR. GRIFFIN: This is the January letter.

THE COURT: Letter of January 20, 1972,

from Mr. Nyquist to Mr. Gardner.

MR. GREGORY: This isn't the one that I was referring to.

THE COURT: There are a number of letters. Is it the one that was marked this morning?

THE CLERK: That would be Exhibit 266.

MR. GREGORY: 278.

THE CLERK: Plaintiffs' Exhibit 12 would be the letter.

MR. GREGORY: Let me see it.

MR. GRIFFIN: Plaintiffs' Exhibit 12?

THE CLERK: 12 isn't in evidence.

MR. GRIFFIN: We haven't used that.

THE COURT: That hasn't been used yet. There are a number of other letters, 266, letter from Mr. Nyquist to Mr. Gardner of October 11, 1973.

MR. GRIFFIN: Here's the same thing.

THE COURT: What subject is it about, Mr. Griffin?

MR. GREGORY: Is this in evidence?

MR. GRIFFIN: Sure. Exhibit 103.

THE COURT: Exhibit 103?

MR. GREGORY: Right.

BY MR. GREGORY:

Q Well, Mr. Gardner, in relation to Dr. Nyquist's letter of January 20, 1972, noted more specifically as Plaintiffs' Exhibit 103 in evidence, and this letter was addressed to you, and Dr. Nyquist says, commencing on Page 2 of the letter, "I ask the Board of Education to submit to me by April 1, 1972, a desegregation plan for the schools in the Buffalo School System, under which every school would substantially reflect the racial composition of the entire district." Okay?

A Yes, sir.

Q Do you know what the racial composition of the entire district was at that time?

A Close to forty sixty, close to forty sixty.

Q Do you know of a way - - or was any plan advanced by the Board throughout your stay on the Board with that particular directive or request could have been accomplished without forced cross busing?

A No, I know of no way to do that without transportation of students, forced or what have you, without transportation of students.

Q Okay. Now, earlier in your testimony you said that the majority of the Board refused to comply with this directive, right?

A. That is correct.

Q And that you and the other two members who made up the so-called minority on the Board were in favor of complying with the directive?

A. No, sir. What I said to you was that - - what I testified to was that the majority was neither willing to comply with the directive, nor to consider and discuss any alternative plan to move toward compliance with the particular directive, whereas the minority, Dr. Blackman wanted to comply with the directive immediately, Mr. Blaine and myself, in one measure or another, but both of us wanted to move toward compliance with meaningful progress, in accordance with the Commissioner's schedule or on some slightly deferred basis, if we could arrange it. I believe that is contained in my letter to the Commissioner, I think there is a description of those points of view.

Q But you would not be able to comply with that directive, following through on what you have just said that the district would be reflected - - that every school would substantially reflect a racial composition of the entire district, the plan that you offered wouldn't comply with that particular directive or request?

A. The plan - -

Q True or not?

THE COURT: Mr. Gregory, will you please let the witness answer the question.

THE WITNESS: The plan that the minority would have tried to discuss with the majority, and indeed, the Heck plan, even if carried out, would not have complied immediately with the letter of the Commissioner's directive. However, the Commissioner stated to us, and this was in the minds of all Board members, at the February 21, 1972 meeting which we had with the Commissioner, from the very beginning, and on a variety of subsequent occasions, the Commissioner stated - - made clear that while the language of his January 20th letter was, as you read it to be, he would be willing to, he was not irrevocably tied to fine percentages or to a particular time schedule, and that while he expressed a goal in that letter, I think when he came to realize th degree of local hostility and opposition, he was willing to accommodate himself to some extent and not to achieve, as quickly as he had hoped all thathe hoped to achieve. He was willing to compromise, he discussed a variety of things with us. The unwillingness, which I found, to cooperate and to move toward some plan, which might have been workable, lay really with the Board and not with the Commissioner.

BY MR. GREGORY:

Q Is there any place - -

THE COURT: Mr. Gregory, he answered your question. The answer is that neither the majority or minority at that time could come right out, except Mr. Blackman, and Mr. Blackman said, 'We should immediately comply with the directive of the Commissioner.' All right, can we have another question?

MR. GREGORY: I was about to ask another question, your Honor.

BY MR. GREGORY:

Q Is there any place that these remarks of the Commissioner, wherein he stated he was willing to compromise, are they recorded any place, like this this is recorded in this letter?

A. I have my notes of the discussion.

Q Any official record of it, like Board minutes or letters?

A. No, sir, I don't believe so - - if you will let me finish the answer, except the Grenda report is different from the Commissioner's letter, and the Grenda report came from the Commissioner's office.

Q. In any event, my question to you is, wherein there is a record of the directive, so to speak, from the Commissioner's letter, and the Grenda report came from the Commissioner's office.

Q. In any event, my question to you is, wherein there is a record of the directive, so to speak, from the Commissioner, there is no similar recorded paper modifying or suspending this, is that correct?

A. That is correct.

Q. Okay. Now, you did not advocate cross busing as a means to achieve the Commissioner's goal, as you now describe it, did you?

A. I did not advocate immediate compliance with the full letter of the --

THE COURT: Well - -

MR. GREGORY: Your Honor, you have been on me pretty much the whole afternoon because - -

THE COURT: I am not on anybody right now.

MR. GREGORY: I ask questions and, in all honesty, I believe the answers are not responsive. I asked what I think is a simple question.

THE COURT: Just a minute, wait a minute. The question was did he advocate cross busing.

MR. GREGORY: As a means of achieving the Commissioner's goal, yes or no?

THE COURT: I'm not going to demand that he answer yes or no. You answer the question, Mr. Gardner, the way you want to, and you listen to the answer.

MR. GREGORY: I have been.

THE COURT: Could I hear what I started to say?

(Thereupon, the reporter read as follows: "A./ I did not advocate immediate compliance with the full letter of the - -")

THE WITNESS: I did not advocate the immediate compliance with the full extent of the Commissioner's mandate, as set forth in his letter. I did advocate a series of steps moving toward that, which would have involved transportation of pupils on an increasing basis, starting from smaller beginnings than the Commissioner had in mind, and moving to a more complete plan over a period of time, yes.

BY MR. GREGORY:

Q By that, do I assume that you - -

A I don't like to use the term "forced busing" as you do. I am not sure if the plan had been carried out, as we had hoped to do it, it would necessarily have been forced busing. I would call it transportation of students, it might have been voluntary or involuntary at one time or another - -

Q Go ahead.

A I was going to say I always believed - - when I say it might have been voluntary or involuntary at one time or another, that leaves it dangling, I never believed that the community was given a fair chance by the Board. I believed that a better approach and a plan of the kind that the minority tried to develop might have achieved at that point, if not later, might have achieved some acceptance that the community never had a chance to speak on.

Q Just some at random questions. During your tenure on the Board, did you ever propose redistricting Woodlawn Junior High School?

A. It was discussed, never seriously proposed, no, sir.

Q By you, I mean, specifically.

A. Yes. No, I never seriously proposed it.

Q Now, earlier in your direct examination, you said something to the effect that on July 6, 1972 - - If you don't recall it, say so - - The School Board offered Polish, Italian and Russian at East High School, is that right?

A. That may be the date on which we changed the policy so as to offer not just those three subjects, but to offer at East any subject for which there was a reasonable demand.

Q You specifically, in your testimony, mentioned Polish, Italian and Russian?

A. No, that was Mr. Griffin's question to me, and I corrected him, as I am correcting you now. It was not limited to those three subjects.

Q After the Board passed this, did you make any inquiries relative to the demands by the student body at East High School with reference to Polish, Italian and Russian?

A. Yes, we discussed that several times.

Q And what answers did you receive from your staff relative to the demands by the student body for those subjects?

A. It looked like there was much less demand to take these courses at East than at South Park.

Q There wasn't any demand?

A. We had some classes, and we had a very few students at some of them too.

Q Also yesterday, in your examination, we were talking about some particular school there, namely, School 16, do you recall that?

A. Yes, sir.

Q And do you recall that you stated that the streets in that particular school district are predominantly made up of white families, white residents?

A. We said that the families to the west of Main Street were predominantly white, and the bulk of the district was to the west of Main Street, yes.

Q And the families therein were basically white people, is that correct?

A In the portion of the district that I described, which is most of the district. But there are some black families, there are some east of Main Street included in the district.

Q Do you have any idea - - You said they were basically white, is this from your studies on the Board or from just your general knowledge?

A I know that area very well. I lived in that area for about ten years, and I have friends, and I worship at a temple in that area, too. I visit it frequently.

Q The temple being where?

A At Delaware and Barker, which is in that district.

Q Delaware runs right through that district?

A Yes.

Q So does Elmwood?

A Yes, sir.

Q All right. How long has it been since you lived in that area?

A Oh, about eleven, twelve years.

Q And do you know of any residential changes in that particular area that you are describing west of Main Street?

A Oh, of course, there is some change in all parts of the City.

Q I am referring to that specific area.

A But there it is predominantly white.

Q I agree with you. I am talking about the nature of the people, the type of people who reside there.

A What is your question?

Q Are you familiar - - Do you know of any change in the type of people, all be it they are white that now reside in that area?

MR. GRIFFIN: I must rise to object to the form of the question relative - -

THE COURT: Do you mean do they have long hair?

MR. GREGORY: No, what I am getting at, is if they are no longer under the age of eighteen, your Honor, predominantly, although they are still white.

THE COURT: I don't know what you are getting at, Mr. Gregory.

MR. GREGORY: If I am allowed to finish, I will get there.

THE COURT: I think we are all familiar with the general area. There are a number of apartment dwellings up and down Delaware Avenue, and there are some few on Elmwood. On Elmwood there are a number of students who attend the State University to the north, and I suppose some of them live there. Elmwood Avenue to the south, there are many small shops and stores. I think we can agree on those things, Mr. Gardner. Can you bring us down specifically?

MR. GREGORY: Sure. All I am saying is that in Mr. Gardner's testimony yesterday, in answer to the questions asked by Mr. Griffin, the allegations and the inferences were that School 16 is predominantly a black school, although located in a predominantly white neighborhood. Now, that is true if we leave it at that, but I do not choose to leave it there. I think the facts will show that School 16 is a predominantly black school that is located in a predominantly white district, that it is devoid of white children. If they want to stipulate to that, I will drop the questioning.

THE COURT: You know, none of us are experts in that field. You can bring in the census tracts. Mr. Gardner is giving his opinion of the district. I can see where we could ask him a lot of questions, how many times you've been back there, and all the rest of it, but he is not put on the stand for that purpose, and if you can show that there are more elderly people there now and School 16 has a very low population of students, I mean that is something else.

MR. GREGORY: He said yesterday, your Honor, that School 16 was predominantly black, however, the neighborhood is predominantly white. I ask him the same question and Mr. Griffin rises and objects to it. I mean I don't understand. Why can't I develop - -

THE COURT: There are a number of elderly people living in the neighborhood, I believe.

THE WITNESS: Yes, there are. There are several nursing homes.

MR. GREGORY: Why can't I develop that from this witness and save the Court's time on my case, if he says what I am looking for. If he doesn't know, all he has to do is say he doesn't know.

THE COURT: All right, next question.

BY MR. GREGORY:

Q Now, let me ask you this, if you know, how old is that map, Exhibit Number 1, with respect to the boundaries? In other words, how long have those boundaries, as they appear on the map, been in existence?

A. I don't know the date of the map, Mr. Gregory.

MR. GRIFFIN: It states that it is 1972.

THE WITNESS: I'm sorry, it is right there, I beg your pardon.

BY MR. GREGORY:

Q That is the date the map was drawn?

A. Those district lines, some of them have been in existence for many, many years without change. Others have been changed in minor degree in recent years. On the whole, I would say there haven't - - in my five years on the Board, there were not many significant district changes.

Q Okay. You were on the Board commencing in 1969 until this present June 30th, is that right?

A. Yes, sir.

Q Your answer then to that question is that that map then, as far as you are concerned, pretty much reflects what the boundaries have been for some time?

A. I think that is probably right.

Q Okay. With respect to redistricting - - I don't know if they show on there, the high school districts. It doesn't show on there, does it, Dick?

MR. GRIFFIN: No.

THE COURT: The high school districts are not shown.

MR. GREGORY: All right. If your Honor please, maybe we can get something so that we don't have to bring in another map, and kind of superimpose the high school districts on that map. Would that be satisfactory to the Court?

THE COURT: Mr. Griffin, are you going to have a high school map?

MR. GRIFFIN: I believe we have one.

MR. GREGORY: Could we superimpose it on that with a crayon or something? Not right now, sometime in the future.

THE COURT: He is going to have a map of the high school districts.

MR. GREGORY: I thought we could have it altogether.

BY MR. GREGORY:

Q How about the redistricting of high school districts, the academic schools? We know the vocational schools are city-wide, but how about the redistricting of high schools?

A. What about them?

Q. When you were on the Board were the high schools changed?

A. Mrs. Coon asked me about that - - I think it was Mrs. Coon asked me about that this morning. I said I recall that was reported in one of the periodic reports to the Commissioner on the integration progress. I do recall that while I was on the Board, we made a change in the Bennett District. It was not a major change, but there was a change. Beyond that, while the report that I looked at - - Mrs. Coon showed it to me - - talked about changes in the Lafayette and Grover Districts, I have a vague recollection, but I really don't recall more than the Bennett change in any specific detail.

Q. All right. Weren't changes made in the Kensington High School District?

A. Could well be. That is an overcrowded school. We have had some questions. I don't recall a lot of discussion at Kensington, I really don't recall.

Q. How about Grover, any recollection with respect to that?

A I recall a discussion, I don't recall action being taken, it may have been.

Q How about Riverside?

A Riverside, I don't think we changed the Riverside District. We changed the class schedules, as I recall, to split classes or stagger classes of some kind.

Q Let me ask you this, you don't have any recollection. With respect to the redistricting of the academic high school districts, is it a fair statement to make that each one of these redistrictings improved racial composition by increasing the black makeup of those schools?

A The only one that I can speak to specifically, is Bennett, and there it reduced the black percentage, and was designed to do so.

Q Would you care to comment, if you can, reduced from what to what?

A I've got a figure of forty plus. In 1973 it was 43.3 per cent black. My recollection - - I'm not sure in what year, it is in that 73 - - well, probably in '73, it might have been in '72- 73 we made the change at Bennett, and it didn't have a significant percentage effect, maybe one or two per cent, something like that, maybe five, but not significant in the total of the black percentage then there.

Q Is it not a fact, from this record, that between the years 1966 and 1973, the percentage of blacks at Bennett increased from 27 per cent to 43.3 per cent?

A. That was - - yes, it did. That was the result of an earlier redistricting of the Riverside-Bennett Districts.

Q What did they do in that redistricting?

A. That was before I was on the Board, but I know that a portion of the Bennett District, the previous Bennett District, was reassigned to Riverside.

Q Would you describe that portion that was reassigned to Riverside as being predominantly black or white, mixed or how?

A. Predominantly white.

Q So then what the School Board did is took out predominantly white students from the Bennett District and filled up the Bennett District with what?

A In order to create more room for black students at Bennett.

Q Did more black students come into the school?

A That is correct.

Q Do you consider Bennett High School, with a black composition of 43.3 per cent, an integrated high school?

A I consider it reasonably well integrated. It is approximately the percentage - - judging, as I do, with reference to the composition in the district, it is pretty close to the district composition.

Q So that is very definitely an affirmative act on the part of the Board of Education to achieve integration in the school system?

A Yes. That was - - When it happened in the mid-60's- - that was an affirmative act.

Q Now, in 1966, Grover Cleveland was listed as having a black composition of 6.6 per cent, and as of October of 1973, the black composition was up to 22.7 per cent?

A Yes, sir.

Q All right?

A Yes, sir.

Q Okay. That is a 16 per cent increase, a 16.1 per cent increase?

A Yes.

Q Do you know, of your own knowledge, or through facts that came to your attention, whether this increase came about through some affirmative action on the part of the Board?

A Yes, I do. Part of it came about as a result of the voluntary busing program, because the Board established the policy that if a student was bused to a receiving school in a high school district other than his home district, that he had the choice of attending high school either in the district of the school to which he had been bused or in his residential district. Part of those students who were bused into the Grover District went to school, elementary school in the Grover District and continued going to Grover. It may have been also the result of a redistricting of Grover per se, Grover itself, I don't know that.

Q Is it also fair to say that Grover is situated in a predominantly white neighborhood?

A Yes.

Q With respect to Kensington High School in the year 1966, the percentage of black membership in the school was two per cent, and in October of 1973, it had risen 41 per cent, to 43 per cent?

A Yes.

Q Is it fair to say that Kensington is located in a predominantly white neighborhood?

A Yes, I think so, but it is interesting to take a look at Schools 61, 85 and 82.

Q Yes, it is interesting, but is it not a fact that it is still located in a predominantly white neighborhood?

A Yes, I think so. Less so than before, I don't think it has the same majority as it once did, the schools indicate that.

Q Do you think then - - Would you conclude from these figures that some affirmative action of the Board has substantially contributed to the increased percentage of blacks in Kensington High School?

A Probably some. I would be less certain of Kensington than I would be of Grover, for example. I would want to take a look. The same argument I made as to Grover, you know, with the busing, the transported pupils to the receiving school - -

Q Busing, that is an affirmative policy of the Board?

A. Certainly, I said so before. I'm not sure whether the Board has created the racial balance at Kensington to the same extent that it created it at Grover, or whether the Kensington situation results more substantially from neighborhood population change, residential patterns.

Q Well, without going into Lafayette to the same extent, is the same thing true at Lafayette, the racial composition of Lafayette has, in fact, substantially increased since 1966 to today where, even in your definition, it is an integrated high school, right?

A. Yes, that is correct.

Q Would it be fair to say that Lafayette is still situated in a predominantly white neighborhood?

A. Yes, sir.

Q Almost exclusively white?

A. Yes, sir, it would be.

Q Would you conclude that the reason for this increase and the fact that Lafayette today is a racially integrated high school is because of the affirmative action of the Board of Education?

A. Yes, but more than that - - do you have - - I'm sorry, Mr. Gregory. I want to answer your question, but do you have the attendance figures over a period of years, the total pupil attendance figures?

Q No.

A I don't think they're in evidence at all. I would be interested to see. I think you will find that in some of these high schools, the total enrollment is down, so that the percentage of students attending a school which is black may represent a smaller net increase than you would think ordinarily, although an increase because the total population of the high school student body is down, the total enrollment in the district is down in the last three years by close to ten thousand pupils, but not the blacks, because the blacks stay in town.

Q With respect to - - I'm sorry.

A The total population is down. The black population is not because there is less movement of blacks.

Q I take it that you are talking about the student population?

A. Yes, the student population.

Q Because the blacks stay in town?

A. Because the blacks stay in town, less movement out of Buffalo of black than of white families.

Q I take it by that you mean the whites are moving out of the Buffalo School District?

A. Out of the Buffalo School District and out of the City of Buffalo, yes, sir. There are other demographic reasons for it, as well.

Q With respect to Riverside High School, the black percentage in Riverside went from 1.4 per cent in 1966 to 14.4 per cent in 1973, an increase of 13 per cent, right?

A. Yes, sir.

Q Is it not a fact that of all the high schools in the City of Buffalo, those academic high schools, maybe even the vocational schools, Riverside is the one high school furthest from the core area of the City, right?

A. Yes, sir, I think that is correct.

Q Is it fair to say that Riverside would represent the longer bus trip for any black student having to be bused to school?

A. Well, it depends upon where the black student lives.

Q From the core area I'm talking about.

A Well, maybe slightly longer than South Park or Bennett, yes, but not significantly.

Q Now, I take it from - -

THE COURT: I hope, Mr. Gregory, we are not going to make Mr. Gardner a transportation expert, such as bridges out and all that sort of thing.

MR. GREGORY: Pardon me?

THE COURT: I'm sorry, go ahead.

BY MR. GREGORY:

Q In terms of your own definition, would you consider or would you not consider Riverside, with a composition of 14.4 per cent black membership, an integrated high school?

A As I answered a similar question before, I would say that is a significant variance from the population mix of the district.

Q In other words, do I glean from your remarks relative to that that you don't consider a school integrated unless it substantially complies with the racial composition of the community?

A. Well, not necessarily. It doesn't have to mirror the racial composition of the school population, not just the community itself, but I guess I feel it has to have - - don't ask me to define it, I won't try to do so because I can't - - I think it has to have more than a nominal presence of the minority race.

Q. I take it that you then consider 14.4 nominal?

I consider the 14.4 to be at a substantial variance with the 45 per cent in the total district, and in that sense, nominal.

Q. Okay. Of course, the same thing is true for South Park High, everything you said about Riverside holds true for South Park?

A. Slightly more so, I suppose.

Q. The figures are approximately the same?

A. Yes, sir.

Q. Okay. Now, let me ask you this. Do you feel that- - even though you feel that is nominal to be interpreted as you have described, do you not feel that the increase in the percentage of black membership in Riverside High can be directly attributable to the affirmative actions on the Board, on the part of the Board to implement integration?

A. I think it can. I'm not suggesting that everything is just as simple as arithmetic. We are dealing with people, not numbers, and I know that. I don't want my remarks to be misunderstood in that regard.

MR. GREGORY: Your Honor, I would like to pursue a couple of other areas, I don't know how long - -

THE COURT: I had hoped that we would be able to excuse Mr. Gardner.
He has spent a day and a half with us. He is not going to be the only witness in this case. It seems to me that many of the questions that you just asked him about the makeup of various schools is in the record, and it doesn't make a whit of difference. It is interesting to have his opinion, but he has expressed his opinion again and again and again about what his view was as to whether or not this was sufficient

or insufficient, and it really doesn't help us to look upon him as the only witness in the case. You are going to have a lot more witnesses.

MR. GREGORY: I didn't ask these questions to get this into the record, it is already in the record, it is an exhibit in the record. I asked Mr. Gardner these questions because Mr. Gardner threw out - -

THE COURT: Mr. Gregory, he testified about meetings with the Board, meetings with Mr. Nyquist, meetings with other Board members. You know, this has nothing to do with that, what his opinion is.

MR. GREGORY: If I may, your Honor, I specifically remembered - -

THE COURT: What do you want to ask him about?

MR. GREGORY: I was going into the remark about optional districts, how they affected - -

THE COURT: All right.

BY MR. GREGORY:

Q I would like to ask you a couple of questions. Since your tenure on the Board, you have become familiar with optional areas?

A. Yes.

Q One of the optional provisions is that any student living on a street that forms the boundary of a school district could go to the school regardless of - - hold that - - could go to either school, right?

A. Yes, sir.

Q That is, the street he lives on acts as a boundary for him?

A. Yes, sir.

Q Now, do you know how long that particular optional policy has been in existence?

A. No, I don't.

Q Do you know whether or not this particular optional policy was put into effect by the Board since you have been a member?

A. No, I am sure way back before that.

Q Would you say it was way back and long before the question of segregation or integration arose in the

City of Buffalo?

A. I really couldn't say, I don't know. It is an old - - I don't know, what is my guess worth to you, Mr. Gregory, nothing really.

THE COURT: Mr. Gregory, if that proof is important to you, it is very simple for you to bring in someone knowledgeable about that, and they can explain the whole history of the options.

MR. GREGORY: I won't pursue that portion any further.

BY MR. GREGORY:

Q Do you feel that the optional zones and optional areas have substantially contributed to the racial imbalance in the City of Buffalo that exists today?

A. I believe it contributed to it in some measure.

Q Well - - I forgot the question I was going to ask him. Do you, of your own knowledge, know the extent of the busing program in the City today, the number of students?

A. Approximately, yes, sir.

Q How many?

A. Something - - they don't have the first five week report this year, it takes five weeks of school before they have hard figures or reasonable figures that they can rely on, but it is something in excess of three thousand, thirty-two, thirty-three hundred, maybe a few more this year.

Q. Do these three thousand or thirty-two hundred, are they made up of all black students?

A. Black and Spanish surnamed, I am not aware, as far as I know, there are no whites, there may be some inner-city whites in the group, I'm not sure.

Q. Are they all bused outside of their neighborhood school district?

A. Yes, sir.

Q. Are they all primarily bused for the purpose of achieving integration or better racial balance in the schools?

A. Yes, sir.

Q. Do you know for the last - - let's say for the last school year, which would be '73-'74 school year, what the cost of busing to the Board of Education was?

A. The figure used to be about two and a half million.

There was an NFT fare rate. I would estimate close to three million. Ten per cent is the cost for the Board of Education.

Q I don't know what you mean.

A. I would estimate the cost at close to three million dollars for the last year of which, in answer to your question, the portion that the Board pays - - the Board lays it out and receives ninety per cent reimbursement in the following year.

Q One last question. You worked on the school budget for '74-'75, right?

A. Yes, sir, I did.

Q What was the amount of the budget, in round figures, I don't want to hold you to the dollar or penny, what was the budget request of the Board of Education to the Common Council?

A. I think I've got that with me. May I look?

Q Just roughly.

A. I would say we requested around ninety-six, ninety-seven million dollars.

Q What were you granted?

A. I think around ninety-one.

Q This was a budget that had a built-in deficit of something like five million dollars?

A. I think that is correct.

THE COURT: Mr. Griffin?

MR. GRIFFIN: Conscious of the time, your Honor - -

THE COURT: You know, the thing is, if we are going to be some time, I think the best thing to do is to break. Mr. Noel and also the Court can only absorb so much and - -

MR. GRIFFIN: I could do my redirect in six minutes. I will cover it with a broad brush. I had planned to be more specific - -

THE COURT: My point is this, I don't want to cut Mr. Gregory off or yourself. If we could do it conveniently, it seems to me that it would be best to let Mr. Gardner go. He has been with us for a day and a half. Go ahead.

REDIRECT EXAMINATION BY MR. GRIFFIN:

Q. This morning, Mrs. Coon brought up new matter as to two reports that were purported progress reports, that were submitted by the Board in 1969 and 1970. Without going through all the details, one thing mentioned was the opening of the West Hertel School, correct?

A. Yes, sir.

Q That had occurred sometime before 1969, had it not?

A. No, I think it occurred in the - - as of the fall of 1969, I think it opened for the 1969-70 school year.

Q That had been something that was in the process for some time?

A. It had been reported upon for a long time, sure. It wasn't new.

Q It listed two items, the voluntary busing plan and portable classrooms, that was all part of one thing, is that correct?

A. Yes, the portable classrooms made possible in part of the busing plan.

Q And the next thing that was mentioned was a project at School 54; namely, Project Sit Up, correct?

A. Yes, sir.

MR. GRIFFIN: May the record show that School 54 has progressed with respect to its racial balance now up so that the black population is 66 per cent, in accordance with the 1973-74 census.

BY MR. GRIFFIN:

Q And the last thing that was mentioned was cooperation with suburban school districts, and you covered that, correct?

A Yes, sir, I mentioned that.

Q Just to zero in on those progress reports; in your judgment, at that time, did the Board's report show any meaningful progress toward eliminating the progressive segregation of the schools?

MR. GREGORY: I am going to object to the question for once. Your Honor, this draws conclusion. The record will speak for itself. This is obviously a legal conclusion that he is being asked to answer.

THE COURT: Well, I will permit the answer. I will keep your argument in mind.

THE WITNESS: Mr. Griffin, the matter to which you refer first involved me personally in an active sense in the integration of the schools because I reviewed the report, the early report, that passed before the Board for approval before they went to the Commissioner, in comparison with previous activities in integration efforts by the Board, and I concluded that while the Board - - and expressed myself many times to this effect - - while the Board had started out upon a program of busing and of middle schools and of a variety of other things, by the time that - - with hopes, and in the case of the portable classrooms, for example, against adversity - - but that by the time I became a member of the Board, it was clear that there had not been made significant additional progress and that none was likely to be made if we merely continued the same efforts which had been proved to be insufficient, and I was particularly anxious to see if we could not redouble those efforts, and to this day have not done so.

BY MR. GRIFFIN:

Q Now, the last matter that I would like to ask you about, without conceding the relevancy of Mr. Gregory's line of questioning at this stage in the case, Mr. Gregory asked you some questions about transportation, busing or however you want to refer to it, within the Buffalo School System, and that the directive of Commissioner Nyquist, of January, 1972, to achieve a meaningful racial balance of all the schools, would have required some additional transportation, do you remember that line of questioning?

MR. GREGORY: I object to the form of the question because he is not quoting my meaning correctly.

THE COURT: I will take that into account. Overruled.

BY MR. GRIFFIN:

Q Is it not true that in most instances of students attending vocational schools within the City of Buffalo, that they daily take a bus to and from the schools?

A. Yes.

Q For years, the Board of Education in the City of Buffalo has been paying for that, correct?

A. Yes, sir.

Q Incidentally, is that cost included within the three million dollar busing cost that Mr. Gregory mentioned?

A. The figure of three million dollars includes both integrated and nonintegrated transportation.

Q In the general south and southeast part of Buffalo there is no vocational school, is there?

A. No.

Q Anyone that goes to vocational school travels every day by means of a bus?

A. Yes.

Q In the general northeastern part of Buffalo, at least north of Delevan and Kensington, out in the Bennett area, there is no vocational school, is there?

A. None on the east side of the City, no.

Q So that any student from that area, and there are many, daily use transportation to attend a vocational school, correct?

A. Yes, sir.

Q. Is it not true that for years there are special progress classes made available in the City of Buffalo where students will travel a distance on a bus?

A. Yes, sir.

Q. Isn't it true that daily within the City of Buffalo, back and forth, and subsidized by the City of Buffalo and the State of New York, that students go to a variety of private schools, back and forth, through bus subsidization by the State of New York, through the City of Buffalo and the State, to both elementary and high school, is that correct?

A. Yes, sir, that is correct.

Q. Isn't it true that in just about each contiguous suburban area to Buffalo that elementary school children and high school children daily travel to schools by means of transportation, as opposed to neighborhood schools?

A. That is my understanding.

Q. Yet, the Board of Education majority, as of April, 1972 - - correction, March of 1972, when the issue came before them as to achieving integrated education, in accordance with the Commissioner's directive, took a complete position against providing transportation for that purpose, isn't that correct?

A. Yes, sir.

MR. GRIFFIN: That is all.

THE COURT: Mrs. Coon, do you have anything else?

MRS. COON: No.

MR. GREGORY: I do, I do.

RECROSS EXAMINATION BY MR. GREGORY:

Q. What are the ages of the children being bused to vocational schools?

A. Secondary school students, probably on the average of fourteen and up.

Q. Do you know how many take the bus?

A. Twenty-odd thousand, twenty thousand a day, something like that. I think we have around twenty thousand bus passes. We also operate twenty-seven, I believe, buses of the School Board itself, which are involved in the integration transportation program.

Q But those are high school students?

A Well - -

Q That are being transported by the NFT bus, they get on the bus like everyone else does.

A Yes, but there are a lot of other students who get on the NFT also who participate in elementary school busing programs.

THE COURT: Mr. Gregory, you can make this point, but I am sure there are records which can be put in here - -

MR. GREGORY: Well, your Honor, I really don't want to quibble, but Mr. Griffin could have made the same point with records, and there are other people he is going to call, too. I have no further questions then.

THE COURT: All right. Thank you, Mr. Gardner. We will convene again tomorrow at 10:00 o'clock and continue.

MR. SCHWARTZ: I realize that there are other pressures on the Court, but would it be possible, because of two out of town witnesses, tomorrow, to convene at 9:30?

THE COURT: We will start at 9:30, Mr. Schwartz. In a case like this, I know it is hard to schedule. But it is going to take evidently some time with some witnesses, maybe some are only in for one point. I think we can go along with that, perhaps it would be best if we start at 9:30.

(Thereupon, the court was in recess at 5:30 p.m.)

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PROCEEDINGS: October 3, 1974, 9:50 a.m.

APPEARANCES: As before noted.

THE COURT: Mr. Griffin, Mr. Schwartz.

MR. GRIFFIN: I yield to Mr. Schwartz this morning.

THE COURT: Fine.

MR. SCHWARTZ: Your Honor, Mr. Gilbert H. Francis, please, is our next witness.

THE COURT: Mr. Francis, step up, please.

MR. SCHWARTZ: We thank the Court for its cooperation in setting the hour early this morning.

THE COURT: I wasn't able to meet it because I had some lawyers come in on an important matter.

GILBERT H. FRANCIS (108 Bennington Drive, Heightstown, New Jersey), a witness called by and in behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SCHWARTZ:

Q. Mr. Francis, what is your present occupation?

A. I am the Director of Equal Employment Opportunities for Supermarkets General Corporation.

Q. Where is that corporation located?

A. Woodbridge, New Jersey.

Q. What was your position prior to that?

A. Prior to that I was Director of Civil Rights for the State of New Jersey.

Q. For the entire State of New Jersey?

A. The entire state.

Q. During what period of time did you hold that position?

A. During '73 and a portion of '74.

THE COURT: Excuse me, Mr. Francis. Can you just keep your voice up a little bit more, please?

THE WITNESS: Sorry.

BY MR. SCHWARTZ:

Q. And what were your duties in that position?

A. Well, the position is the same position as the Commissioner of Human Relations or Human Rights for the State of New York and in that position I was responsible for all Civil Rights cases that are

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brought by complaints or initiated by the Division or in cases of the cases that were brought about by people within the State Government who were filing against the State Government itself.

Q. And what position did you hold before that?

A. Before that I was the Assistant Branch Chief for Elementary and Secondary Education for the Office of Civil Rights in New York.

Q. For the Office of Civil Rights in New York?

A. Department of Health, Education and Welfare.

Q. I see. The Federal Department of Health, Education and Welfare?

A. Right.

Q. And how long were you in that job?

A. I was in that job for about six years.

Q. Now, what were your duties in that job?

A. To be involved in compliance reviews throughout the region and in part throughout the various other regions in the country; to participate in elementary and secondary school district reviews and at times I worked on higher education reviews and worked in contract compliance and any other area that related to HEW's responsibility in enforcing Civil Rights compliance.

Q. Now, you said, you referred to a compliance review. What is that supposed to be compliance with?

A. The compliance is with Title 6 of the Civil Rights Act of 1964 which states essentially that any organization that receives money directly or indirectly from the Federal Government under HEW are responsible for review to make sure that they do not discriminate because of race, color or national origin.

Q. I see, and that included school systems receiving HEW money?

A. Yes, it did.

Q. Now, in the course of these duties on behalf of the public, - the Department of Health, Education and Welfare, did you do any work in Buffalo with the Buffalo School System?

A. Yes, I did. I was the head of a review team that came into Buffalo to do a routine compliance review of the Buffalo School District. Would you like me to give you a little background on that?

Q. Well, can you first tell us or tell the Court when that was?

A. The first contact with the Buffalo School District was in February of 1971.

Q. How did that contact come about; what induced this review?

A. Well, first of all, HEW has a responsibility which comes about in two ways. An individual files a complaint against a school district or entity or the office for Civil Rights on its own may determine that they would like to review a particular school district. The latter was the case in Buffalo where members of our staff who were what we call a site selection committee reviewed statistics as provided by the school districts within the confines of New Jersey and New York determined that Buffalo was a school district where they felt there was some disproportionate figures that required explanation. As a result that it was determined that Buffalo would be the site of a school district review.

Q. By the way, just to back up one moment, Mr. Francis, should violations be found and go uncorrected, what is the sanction?

A. The sanction is that federal moneys that are coming into the school district may be withheld.

Q. And that would have applied to the Buffalo District should violations have been found and gone uncorrected?

A. Yes.

Q. Now, did you come in alone or was there a team of investigators or what coming into Buffalo?

A. Well, the Buffalo Review was conducted in stages and maybe I can run it through rather briefly for you.

Q. If you will.

A. The first visit to the Buffalo School District entailed two of my colleagues and myself coming to the district and meeting with Dr. Manch.

Q. Were you the head of this team?

A. Yes, I was, and we met with Dr. Manch and the various deputy and associate superintendents and we had a meeting at which time I outlined the purpose of the review, the authority for the review and in some ways detailed what we would like to do while we were in the school district. After that we had a meeting with all of the administrators, central office as well as school administrators, principals and so forth out at Woodlawn Junior High School.

Q. Let me interrupt. This was February 1971?

A. Yes, it was. At that time I issued, to each of the principals, a twenty-three page questionnaire which we considered as background information to help us to gain knowledge about the school system and each of the individual schools within the system. That form was issued to each principal attending the meeting that day for them to complete within a period of three weeks and turn over to the school district and for them to return to us so that we could compile data and background information on the schools prior to our going into the schools to conduct the review.

Q. Were those questionnaires returned?

A. Yes, they were. In some cases because of the types of questions involved in the questionnaire, there were more than a hundred pages in the response. To give you an example, in questioning the school district on the background form we asked them to go back fifteen years and provide us information on the number of teachers in the total school, the total number of teachers in the school, the total number of minority teachers in the school and we did the same thing in breaking it down for students. We also did the same thing for capacity of the school. We also went into information as to the type of guidance programs that the school may have, all the way down to including the

* * *

went to the newspaper offices and we sat down and went through their old files and we actually looked at practically every daily newspaper of the two major newspapers in the Buffalo area for the past twenty-five years. We went through minutes of the Common Council. We went through quite a few things.

Q. Now, did there come a time when you put this all together in some kind of a report?

A. Yes. We pulled it together and all the material was turned over to me to put into one basic document which was done and --

Q. When was this?

A. This basic document was completed by June of 1972.

Q. Now, is that basic document PX 263 and 264 which have been marked for identification?

A. That is my copy, my working copy of the basic document.

Q. Now, what happened with this document after you completed it at HEW?

A. The original and a copy of the basic document were turned over to HEW Central Office in Washington for review by the Elementary and Secondary Education Branch and by the general council of HEW.

Q. That was in June 1972?

A. Yes, it was.

Q. Now, this therefore is your report and not an HEW document?

A. That is correct.

Q. Now, the normal procedure in HEW with respect to compliance review, is it fair to say that when a lawsuit is started by either private parties or the Justice Department that the department tends to hold back on its action?

A. It is considered as being a wise procedure because you have two people trying to grind at the same problem at the same time. Therefore, you are wasting the energies of one and insomuch as it has been found that where private suits have been conducted or where the Justice Department goes in that the progress, that the essential purpose of the HEW function is usually served, so there is no point in HEW also proceeding on the same lines at the same time.

Q. So therefore there was no need for HEW to go ahead with this after this suit in this particular proceeding was filed in June of 1972?

A. That is correct.

Q. Now, Mr. Francis, I should like to turn to about three or four areas of your inquiry as reflected both in this document and what you have to tell the Court and let me first turn to the question of two schools, 4 and 34. Did you look into the situation at those two schools?

A. In two ways. In Schools 4 and 34 on the initial on-site review a team went out and did the normal routine compliance investigation at that particular school. When this data was returned to me, I looked at it and I saw what the situation was where you had one school that was predominantly minority and one school was predominantly majority. As a result of this and on the revisit to the school district, I took someone with me and we went out to the area of 4 and 34 visiting both schools and also going through the communities to get a visual observation of the composition of both communities.

Q. Now, in connection with Schools 4 and 34, did you look into the question of whether, - well, strike that. As the map indicates, School 4 is a majority black school, is that correct?

A. That is correct.

Q. And School 34 is a majority white school, is that

correct?

A. That is correct.

Q. And that they are within several blocks of each other, is that correct?

A. That is correct.

Q. Now, did you find anything out about the ethnic composition of the neighborhood in which the two schools were located?

A. The ethnic composition of the entire area, you find that there is some mixing on both sides, but you will find that the area --

Q. Excuse me, by "area" you mean the school district?

A. Within the school district, the area where 4 is above is predominantly minority, where 34 is predominantly majority.

Q. Did you make any studies to determine whether or not white children residing in the area near School 4 were going to School 34 and whether any black students residing in the area around School 34 were going to School 4?

A. We made, - we sat down and we reviewed the names and addresses of every student attending both schools. We determined based on the address listed for the students attending the schools that there were some forty children living in the area of 4 who were attending 34; they were four children living in the area of 34 who were attending School 4.

Q. Did you look into the racial, - whether the children were black or white?

A. We found that the majority, more than half of the children of the forty, - I think it was twenty-one, approximately twenty-one of the children attending 34 were living in the 4 area were majority or were white.

Q. Okay. Was this the conclusion you came to as reflected at Page 587 of PX 264, "The foregoing figures would show thirty-eight minority students, thirty-one black and seven Spanish surnamed who should be attending School 34 enrolled in School 4 and forty-one whites who should be attending School Number 4 attending School Number 34, clearly indicates that the Board policies with respect to permitting their parents to enroll the children in the school of their choice is contributing to the continued segregation of these two schools"; was that your conclusion?

A. That is my conclusion.

Q. And does this document contain the actual names and addresses of the children involved in this area, this matter to which you have just testified?

A. Yes, it does.

Q. Okay. Now, did you have any conve sations with school system personnel about this matter?

A. Spoke to the principal, the same principal is principal of both schools and we spoke to her as to the reason for children who lived in the 4 area attending 34 and the reverse situation where children living in 34 were attending 4 and she said that this was not something that was done by her but by the previous principal who granted some favors and the favors were of the nature if a child, if a parent was to ask their child, if they were living in the area of 4 and they wanted their child to go to 34, the principal, the former principal knowing the person would say "Okay", and following their brothers and sisters as they followed would follow suit without any additional need, excuse me, for permission, would follow suit and even though they lived in the 4 area, would go to 34.

Q. Did you come to any conclusions as to the relative

A. School 34 is an antiquated school and the only reason why, - the change had not been made before was because it was proposed, - was that the parent protest in that particular area had prevailed allowing the continuation of that particular school.

Q. How do you know that fact, Mr. Francis?

A. We knew that fact from the Board of Education, from speaking with people on the Board of Education, speaking with the principal in this particular case; also from Board minutes and also from the newspapers.

Q. Now, you have spent a fair amount of time in the area of education and school districting and that whole sizes and capacities of these two schools?

A. As indicated in the facilities section of the report we determined that School 4 was underutilized and was sufficient to fully contain all of the children attending school in that district. In other words, the children who were attending School Number 34 could be placed into School 4 without any difficulty.

Q. Did you learn anything about --

A. And it would still be underutilized.

Q. Did you make any findings about the age or condition of School 34?

and going through Page 643, is that correct?

A. Yes, because that was an area that we considered a clear violation.

Q. And that contains material that you have gleaned and that you gathered from school board minutes, - I am sorry, school board records and from your own investigation?

A. That is correct.

Q. Now, did you also look into the question of the racial composition and assignment of the staff of the Buffalo School District?

A. Yes, we did.

question of schools, is that correct

A. Yes, I have.

Q. On the basis of your experience and judgment, would it have been possible physically and other ways to merge these two schools?

A. Yes, they could have.

Q. Were you given any other reasons why these two schools were kept separate?

A. None that I recall at the moment.

Q. Now, incidentally, the whole question of Schools 4 and 34 is discussed in your report starting on Page 586 and going through Page 643 - is that correct?

Q. And this was done in what manner?

A. Well, a great portion of it was done from the background forms that were provided by the School District, each principal completing the forms, and this was connected to the form that was provided by the personnel section of the School District. We took the two of them and put them together and were able to go down the line and determine the correctness and the accuracy of the data that was furnished to us.

Q. This was in the spring of 1971, is that correct?

A. That is correct.

Q. Now, I take it the school system provided you with a great deal of information, both centrally and on the spot?

A. They were very cooperative.

Q. And there were interviews as well?

A. During the course of our entire investigation I would say that we conducted some five hundred interviews.

Q. Now, did you come to any conclusions with respect to the assignment and racial composition of the staff of the Buffalo School System?

A. Well, first we came to many conclusions concerning the staff assignment in the Buffalo School District, starting from the top to the bottom, I guess. Number one, we determined that the number of administrators, essentially principals and assistant principals and so forth were totally disproportionate to the number of minority administrators, were totally disproportionate to the number of minority teachers in the school system and the number of teachers within the school system, the total, were disproportionate to the ethnic composition of the Buffalo School District.

Q. What about the assignment issue?

A. We found that more than two-thirds of the minority teachers and administrators were concentrated in schools that were ninety-eight per cent minority or better.

Q. Now, are these findings contained at Pages 717 and 718 of the report?

A. Yes. That is a summary of the findings, yes.

Q. And that relates to both the assignment of black teachers and to the question of how many black teachers there are and how many black administrators and the like?

A. That is correct.

Q. Okay. Now, these are in sum, some of your conclusions:

First, the overall percentage of minority teachers in the system has not increased since 1965. The school background forms show number of teachers totaling eleven per cent of the system in 1965 and 10.3 per cent of the total in 1970?

A. That is correct.

Q. And then you have rather elaborate details which I won't bother reading, but summarized in quote, "Virtually all levels minority teachers are assigned in significantly higher proportions in predominantly black schools than to white schools", is that correct?

A. That is correct.

Q. Okay. Now, did you do a study of the transfer of teachers out of one school to another looking primarily to the racial aspects of these transfers?

A. Yes, we did.

Q. And did you come to any conclusions about that?

A. We came to the conclusion that seventy-five per cent of the teachers who were transferred out of the core area schools or predominantly minority schools were white.

Q. Okay. I show you Page 710 of your report, PX 264, and ask you if those are your conclusions in sum?

A. Yes, they are.

Q. Let me read them as quickly as I can, "From an analysis of the above information on teacher transfer four conclusions can be drawn. One, there are fewer transfers into the predominantly minority schools than into the white schools. Two, very few nonwhite teachers transfer into white schools (less than twenty per cent). Three, seventy-two per cent of the white teachers who transfer, transfer into predominantly white schools, and four, nonwhite teachers transfer in approximately the same numbers (percentage-wise) as white teachers (42.4 per cent to 50.9 per cent). Okay. Now, your Honor, at this time I should like to offer in evidence some information on school system, - on staff that was provided us by the school system. First, a rather large collection of material, PX 45 for identification which is the, - I think it is called "The Civil Rights Survey indicating the racial composition of the various schools" by schools in the City of Buffalo.

THE COURT: Is this prepared by the Board or was this by HEW?

MR. SCHWARTZ: By the Board and turned over to us by the Board in response, - well, I think at a deposition or in response to certain interrogatories.

THE COURT: The fall of 1972 elementary and secondary schools Civil Rights Survey?

MR. SCHWARTZ: Yes, your Honor.

THE COURT: It may be admitted in evidence?

MR. GREGORY: I haven't seen it.

MR. SCHWARTZ: Oh, I'm sorry, and secondly, your Honor, PX 13.

THE COURT: All right. 45 may be marked in evidence.

MR. SCHWARTZ: PX 13 which contains, - which is a report by the School Board staff to the Buffalo School Board entitled "Nonwhites as a percentage of the total professional staff" for the Board Meeting dated February 14, 1973.

(Plaintiff's Exhibit Number 45 received in evidence.)

THE COURT: 13 may be marked also.

MR. GREGORY: Yes, your Honor.

THE COURT: Mark 13 in evidence.

(Plaintiff's Exhibit Number 13 received in evidence.)

BY MR. SCHWARTZ:

Q. Now, Mr. Francis, you are familiar, I take it, with various efforts throughout the country at school districts to recruit black teachers, aren't you?

A. Yes, I think so.

Q. All right. Now, you recall that in discussing your testimony I showed you Paragraph 22 of the stipulation which set out the efforts by the Buffalo School Board to recruit black teachers?

A. Yes, you did.

Q. And let me show it to you again. That is Paragraph 22 of the stipulation which appears on Pages 8 and 9 of the stipulation. Now, do you have an opinion as to the adequacy of these measures?

A. In many school districts this would be considered as properly inadequate in the efforts to acquire additional minority teachers.

Q. What other things have been done by other school districts and can be done?

A. In the period of time of which the Buffalo School District was primarily interested in the effort to recruit minority teachers, similar effort was being undertaken in the school district in New York wherein they went into the southern school districts and contacted teachers who were displaced by the integration program and brought many of these teachers into the New York City School System. Other school systems throughout the country also did the same type of programs increasing their minority teacher enrollments, also increasing the minority administrators because there were a number of principals and vice-principals that were included in that particular available source.

Q. Do I understand your testimony to be that these efforts were in fact successful, that black teachers were obtained from southern schools who were displaced by what was happening in the south?

A. A number of northern school districts did benefit by that.

Q. Any other measures with which you might be familiar?

A. Well, as time moved on there emerged a group of minority talent banks, a group of minority search firms, a group of minority employment firms who could very well provide them with contacts who could be reached and possibly recruited into the Buffalo School System.

Q. And to your knowledge, have these banks and other sources proven fruitful for other school systems?

A. Other areas they have worked.

Q. I see. Now I show you Paragraph (d) on Page 6 of the stipulation which I have also shown you previously which deals with the current racial composition and assignment patterns within the Buffalo School District and have you had a chance to look at that?

A. Yes, I have.

Q. Would you consider that this is adequate now in terms of the kinds of criteria you apply?

A. Based on the statistics that are there and the statistics as previously presented, it would appear that the Buffalo System is moving rather slowly.

MR. SCHWARTZ: Okay. Now, in closing this section, your Honor, I would like to offer Plaintiffs' Exhibit for identification 57 which is a letter dated June 8, 1973 from the Department of Health, Education and Welfare, from a Mr. Robert H. Seltzer, Regional Commissioner, Office of Education, which was provided us by the School Sytem of the City of Buffalo, and that is a document indicating the inadequacy for their purposes of the racial composition and assignment of the Buffalo School System and in effect threatening to cut off the funds. I think it has been agreed to.

THE COURT: Exhibit 57 may be marked in evidence.

(Plaintiffs' Exhibit Number 57 received in evidence.)

BY MR. SCHWARTZ:

Q. Thank you. Now, Mr. Francis, did you and your team make a study of the optional areas?

A. Yes, we did.

Q. And what did you study, what kinds of data did you look at in this connection?

A. We looked at the attendance records for the individual schools involved in the optional areas, specifically those students who resided in the optional areas and the schools to which they were attending.

Q. Now, can you tell us what the significance of optional areas is to the whole question of racial segregation in schools?

A. It was a conclusion drawn by us on the optional areas that it provided an avenue of escape for majority students into majority schools and providing them an opportunity to evade attending majority schools. I mean minority schools.

Q. Now, how does that work? I mean for example you dealt in your report at Pages 559 and 60 with some four examples. Let us take, for example, School 17, Item 3 on Page 559 refers to optional zone among Schools 17, 16 and 56.

A. Okay.

Q. And this is marked on Plaintiffs' Exhibit 39 as the area on the left of the map, and how did that work?

A. In this case as in the other cases we found that essentially the majority students living in that optional zone area opt to the predominantly majority school. For instance, the optional area in 17 that you are pointing to right now, that the majority of the students, white students, would opt into School 56.

Q. Now, 56 as Plaintiffs' Exhibit 1 shows, is not a majority black school.

A. No, it is not.

Q. And School 17 is a majority black school, okay.

A. Minority students in that particular optional area would either attend 17 or 16.

Q. And that pattern is repeated with the other optional, some of the other optional districts in the city?

A. The essential premises is repeated in the other optional zones.

Q. And the examples you give are 40 and 75 in which School 40 is only twenty per cent black, while 75 is one hundred per cent black?

A. Right.

Q. And an optional zone among Schools 54, 17 and 74?

A. The same thing would apply.

Q. Yes. That is what we are talking about. This is the upper part of the map.

A. Yes.

Q. Okay. And then you have an optional zone in the south area of School 57 zone and that would apply there as well?

A. In the case of School Number 17, the utilization of the two optional zones thereby applying provided the majority students the option of going essentially to either 54 or 56 and therefore maintaining those schools as predominantly majority schools and maintaining 17 as a predominantly minority school.

Q. And in your report --

THE COURT: Excuse me, Mr. Francis, when you say "optional zone" --

THE WITNESS: Yes.

THE COURT: In the School 17 District did that mean that within the district there were certain zones or streets where students if they desired could either attend School 17 or School 56, let us say?

THE WITNESS: Yes. In the optional zone any student living in that particular area, the student or essentially the parent could opt for that child to attend any one of the schools that were assigned to that particular optional zone.

THE COURT: It might be assigned, in other words, an optional zone, the boundaries of the optional zone and the boundaries of the School 17 District would not coincide?

THE WITNESS: That is correct.

THE COURT: All right. The optional zone would be a smaller area within the school district zone?

THE WITNESS: Right, which would be adjacent, - in most cases, in most cases, and this one you have a very large optional area in this one which took in the most part of that particular school district because you have the cemetery right above it so this would be, - those two option zones would be basically the residential areas and therefore School 17, a good portion of the school district, of that particular school district was an optional zone.

THE COURT: Of course, if you were a black child and lived in the optional zone, you would also be covered?

THE WITNESS: Yes. The option was available to you.

THE COURT: All right.

BY MR. SCHWARTZ:

Q. But as a practical matter, Mr. Francis, in many of these cases the optional zones were in largely white areas, is that correct, School 16?

A. The movement.

Q. Yes. Did you come to any conclusion about the relationship of Main Street to black and white residential areas?

A. In many instances Main Street was the dividing line, so to speak.

Q. And in what sense, which was east and which was west?

A. The majority being west; the minority being east.

MR. GREGORY: If it please the Court, at this particular time I think it would behoove us if in fact the boundaries of, - by streets of those particular zones we keep referring to were indicated in the record.

MR. SCHWARTZ: They are in the stipulation.

MR. GREGORY: No. To help on what he is talking about now.

MR. SCHWARTZ: We can do that too.

THE COURT: Of course, if we have them. Well, I don't think that is necessary. We have the map there and the map shows the boundary line of School 17 and the other, to the right, the other exhibit entitled "Optional Attendance Areas of Buffalo Elementary Schools in Bi-racial Residential Areas, September 1962", the dividing line as I understand it there is from a census tract.

MR. SCHWARTZ: That's right, your Honor.

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THE COURT: And the grayer area to the east is the area which would be east of Main Street.

MR. SCHWARTZ: That's right.

THE COURT: And it indicates in 1962 from the coloring scheme that area is over eighty per cent Negro and the area to the optional zone, - is there a legend on the map for that, the hatching there?

MR. SCHWARTZ: It doesn't seem to be, your Honor.

THE COURT: Perhaps we have to make it up. Very well. You may continue. You can bring this out on cross examination.

BY MR. SCHWARTZ:

Q. Now, Mr. Francis, were these optional areas brought to the attention of the school district administration?

A. Yes, they were.

Q. And what was their response?

A. I spoke to Dr. Manch concerning the optional areas and the effect of the optional areas and Dr. Manch assured me that the optional areas would be deleted.

Q. And to your knowledge did that happen?

A. Yes.

Q. And to your judgment was that as a result of your conversation?

A. Yes.

Q. By the way, Mr. Francis, to your knowledge Dr. Manch knew of the threatened cut-off involved for failure to comply, do you know that?

A. In the --

MR. GREGORY: Just a minute, please. I am going to object unless there is a more specific remark in the question relative --

THE COURT: Both Mr. Gregory and Mr. Schwartz, we have the letter from HEW which is in evidence. It appears to me apparent that notice, whatever was in the letter was notice to Dr. Manch.

MR. SCHWARTZ: Your Honor, the letter is dated 1973.

MR. GREGORY: Your Honor, may I be heard?

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The letter, the exhibit, I take it that is what you are talking about, the exhibit that was just introduced, makes reference to teacher assignment and teacher assignment alone. I didn't realize that we were still on teacher assignment. It seems to me we were on optional zones.

THE COURT: We are on optional zones.

MR. GREGORY: Now, if Mr. Schwartz' remark or question is still relating to that particular letter, I would appreciate it if that were specified in the question so that I know what he is talking about.

THE COURT: I will sustain the objection to the question. It is leading. If you want to bring it out, let Mr. Francis tell us what he had a conversation about optional areas, with whom and what was said.

MR. SCHWARTZ: All right.

THE WITNESS: Well, I don't want to make any mistakes, but anyhow maybe backing up, in the initial, - in the initial meeting with Dr. Manch and his staff it was stated that one of the options, one of these things is that on finding violations that were not corrected that the threat of cut-off was there and this is one of the steps that HEW could take.

MR. GREGORY: I don't have any objection to that.

MR. SCHWARTZ: That is all I asked.

MR. GREGORY: That isn't what I was objecting to, your Honor.

THE COURT: Mr. Gregory, let the witness finish the statement, whatever it is. Mr. Knisley or Mr. Noel absolutely cannot take down the statements of two people talking at once. All right.

THE WITNESS: As the investigation progressed at any point at which we found an area of possible violation, this

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area was discussed with Dr. Manch for corrective action to be taken.

THE COURT: Mr. Gregory, is there anything you want to call to my attention?

MR. GREGORY: Your Honor, that is not, - he had testified to that earlier. That is not what I was objecting to. Mr. Schwartz asked a question in which he asked the witness "Was the School Board" or somebody in the School Board notified, were they aware of the cut-off of funds, and if Mr. Knisley will read the question back you will see what I am objecting to.

THE COURT: No, we won't, Mr. Gregory. Mr. Gregory, I do think that that was not exactly the question and why don't we just let Mr. Schwartz put another question.

MR. SCHWARTZ: No, your Honor. I have gotten the answer I want.

THE COURT: You may continue.

BY MR. SCHWARTZ:

Q. Thank you, your Honor. There is no need for me to continue on that line. Now, Mr. Francis, did you make a study of the vocational schools in the City of Buffalo?

A. Yes, we did.

Q. And did you come to any conclusions about the student composition on a racial basis of the schools?

A. If I may lead into that.

Q. Fine.

A. During the course of our investigation one of the things that we did was to meet with community groups to try and get the feeling of the community as to what was going on in the Buffalo School Districts. It is through one of these meetings or as an extension of one of these meetings that a complaint was filed with us stating that there were policies and practices as relates to the admission of minority students in the vocational schools that warranted our looking into because it was felt by the people who made the complaint that they were discriminatory and therefore tended to exclude minorities from the vocational schools. We proceeded in the routine manner of our

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compliance review and looked at the vocational schools and we didn't change anything as a result of the complaint, but it brought to light that there was concern about that particular point. We went down the rosters of the vocational schools and based on the background forms we saw that the admissions, - we could see the change in the admissions, you know, the number of minority students being admitted and although it was increasing very, very slightly, it was really insufficient, the number of minority students attending the vocational schools as proportion to the number of minority students in the school system.

Q. Now, is that discussed, is that considered, both your report and the underlying data, at Pages 330 to 414 of PX 263?

A. Yes, it is.

Q. Okay. Now, did you come to any conclusions about the reasons for what you have testified seemed to be, I think you testified a disproportionately low number of black students?

MR. GREGORY: I beg your pardon, but I at this time feel constrained to offer an objection to the form of the question. If he is going to testify with respect to a conclusion he came to and I suppose he is testifying as an expert witness, I respectfully submit to the Court that the facts leading up to this conclusion upon which this conclusion is based should be in the record.

THE COURT: It isn't necessary that he testify in that fashion but it may be a good suggestion.

MR. SCHWARTZ: Your Honor, I think the facts are in the stipulation the racial composition of the high schools and the vocational schools in 1971.

THE COURT: We went into that in great detail yesterday, Mr. Gregory. I will permit him to state the conclusion.

BY MR. SCHWARTZ:

Q. Well, are these the findings you came to, at Page 335?

A. Yes, they are.

Q. Let me read that into the record just to have it

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clear, "The vocational schools admission program was in effect operating on a basis which more frequently than not denied access to these schools to minority group students in a manner not similarly applicable to majority group students. Tests, interviews and couseling methods were used arbitrarily. Thus, the admission policy was discriminatory in effect. However, the school system as evidenced in the attached exhibits has taken steps to remedy this problem. It is deemed practical to follow up in this area to further determine if these remedial steps are effective in eliminating the discriminatory admissions policy of the Buffalo Vocational Schools". Is that your conclusion, Mr. Francis?

A. Yes, it is.

Q. And that appears at Page 335 of PX 263?

A. Yes, it does.

Q. Now, how did you ascertain the reasons for the disproportionately low number of minority students? What kind of investigation did you make and where did you get your information?

A. Okay. Based on the complaint that was filed with us, we met with the people who filed the complaint. They stated that in the Buffalo School System that there was a system whereby a minority group student, when he applied, he or she applied for a vocation school, was subject to interview and a small test administered by the individuals interviewing the person, and I am speaking of the schools exclusive of Hutch Tech, at which there was a standardized examination and --

THE COURT: Mr. Francis, in Hutch Tech, from the testimony we had yesterday I understood that tests there will given to all students.

THE WITNESS: Yes. That is what I meant. What I am saying now was exclusive of Hutch Tech because there was a standardized test there but in the other schools essentially what was happening was that there was a committee that would interview a minority group student and administer an arbitrary or optional test to that minority group student and on the basis of this, it was determined whether the student could attend the

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school or not. The procedure was not the same for majority group students who were not subjected to an interview and testing. This was based as allegations. These allegations were presented to the school district and they were never refuted and as a basis for the conversation and the basis of the statistics showing that the minority school population in the vocational schools was totally disproportionate the decision to eliminate testing and interviewing as a procedure for entrance into the vocational schools was announced.

BY MR. SCHWARTZ:

Q. Now in the course of your discussions with the school system on this matter from 1971 through 1972, I take it you had discussions with them throughout the period you were there?

A. I specifically spoke with Dr. Manch and Mr. Schmidle --

Q. S-c-h-m-i-d-l-e?

A. Who was the head of vocational education for the school district.

Q. Now I show you PX 70, PX 71, PX 72. These are all Plaintiffs' Exhibits for identification; 73, 75, - I am sorry. I got that backwards, 67, 68 and 69, all of these Plaintiffs' exhibits for identification. Now, were these given to you by the school system?

A. These are copies of materials furnished to us by the school system to indicate the course of action being taken by them to remedy the situation.

Q. And these are documents that you got from the school system, is that correct?

A. Yes, they are. Probably we have more documents pertaining to that than we do have here.

Q. Yes. I show you Plaintiffs' Exhibit 70 of a meeting dated September 28, '71. Perhaps you might just read the summary of that meeting by Mr. Schmidl .

A. "Our efforts and their consequences have been gratifying. We are making inroads, exploring areas of mutual concern. Mr. Schmidle indicated that though he was shocked to discover racial practices within the ranks it is well that these were exposed, - these are exposed and eliminated".

MR. SCHWARTZ: I should like to offer these in evidence.

MR. GREGORY: May I ask just one question before we proceed with this? What is the document he just read from?

MR. SCHWARTZ: PX 70, I think.

MR. GREGORY: I have no objection. Those are all Board documents?

MR. SCHWARTZ: That's right, all turned over by them.

THE COURT: Mr.Walsh, what are those numbers again?

MR. SCHWARTZ: Gene, you have no objection?

THE COURT: Would you read the numbers, please, Mr. Walsh.

THE CLERK: I am trying to get them in order.

MR. SCHWARTZ: I am sorry. It is my fault. It is 67, 68 and 69 at the bottom.

THE COURT: 67. They may all be marked in evidence.

(Plaintiff's Exhibits Numbered 67, 68, 69, 70, 71, 72, 73, 74, 75, respectively, received in evidence.)

BY MR. SCHWARTZ:

Q. Now, Mr. Francis, I show you Paragraph 96(b) of the stipulation at Page 31 which reads as follows: "Such changes have not significantly improved the racial isolation in the Buffalo Vocational Schools. Thus, in 1973 dash 74 all three", and that refers to McKinley, Seneca and Hutch Tech, "were approximately eighty per cent white even though white students account for only 60.2 per cent of the total high school population." Now, taking those two percentages as given, the eighty per cent white of those three schools and the sixty per cent of the high school population, approximately sixty per cent of the high school population, would you consider that that is a sufficient improvement to have eliminated the problem that you raised with the School Board?

A. I would say no.

Q. By what criteria?

A. Well, I guess I have to fall on my own private experience and my experiences going back to school district reviews primarily in the southern areas. We used what

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we called a singleton rule which provided that the population of a school in order to be properly balanced should be within the range of seventy-five per cent of the --

Q. Seventy-five and, I am sorry?

A. Seventy-five per cent to one hundred twenty-five per cent of the total population, school district population. In other words, the school district population being, say, forty-six per cent or forty-five per cent, that a racial within 125 or 75 of that would be considered as being adequate.

Q. Now, finally, Mr. Francis, I showed you Pages 27 and 28 of the stipulation, Paragraphs 82 dash 88, which deals with the feeder pattern of elementary schools to the Buffalo high schools and junior high schools and I show that to you now again, and you have seen this before?

A. Yes.

Q. Now, you dealt with the feeder pattern in your study and report, did you not?

A. Yes, we did.

Q. Okay, and what did you find?

A. We found that in twenty-four of twenty-eight of the

K through 8 schools within the Buffalo School District were predominantly majority. Therefore, the effect of this being that majority students in the Buffalo School District had the, - for the most part, - I think it was something in the neighborhood of sixty-five to seventy per cent of them had the opportunity to attend only two schools in their normal school life, a K to 8 elementary school and then going on to a high school, wherein minority group students by and large, some eighty-five or ninety per cent of them had to attend at least three schools. The effect of this we determined as being discriminatory.

Q. And this appears at Pages 12 and 12A of your report?

A. Yes.

THE COURT: This report is marked as an exhibit?

MR. SCHWARTZ: Yes, it is, and I am just about to offer it in evidence right now.

THE COURT: What number is that?

MR. SCHWARTZ: 263 and 264. I should like to offer the document in evidence as Mr. Francis' report and that concludes my examination.

* * *

MRS. COON: Not as to its admissibility.

THE COURT: All right. Mark 263 and 264 in evidence.

(Plaintiffs' Exhibits Number 263 and 264, respectively, received in evidence.)

(Recess taken at 11:05 a.m.)

* * * * * * *

PROCEEDINGS: After recess, 11:15 a.m.

APPEARANCES: As before noted.

GILBERT H. FRANCIS, a witness called by and in behalf of the Plaintiffs, having been previously duly sworn, resumed the witness stand and testified further as follows:

MR. SCHWARTZ: Your Honor, I should like permission to reopen our direct examination because Mr. Griffin would like to ask Mr. Francis some questions on transfer and a few other items as well.

DIRECT EXAMINATION BY MR. GRIFFIN:

Q. We had divided the labor as to various areas of inquiry but because of the comprehensiveness of the report and the stipulation and otherwise I will not go into matters in detail except to ask Mr. Francis the subject of transfers for language and other transfers were a subject of your investigation, were

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they not?

A. Yes, they were.

Q. And also this matter of Woodlawn School, the School 50, St. Augustine Center and other matters which are set forth in the early pages of your report under the findings are contained herein, are they not?

A. Yes, they were.

Q. And I would just like to at this time for purposes of the record direct the Court's attention to Paragraph 60 of the stipulation and read that into the record, "That the practices in administering transfers by both the Office of Pupil Personnel Services and principals of various schools, and the language transfers, have resulted in from 2,000 - 4,000 white students annually attending schools outside of their districts thereby contributing to the higher percentage of black students in various schools, including Schools 54, 16, Fillmore Middle, Genesee Humboldt, Woodlawn, East High School, all of which have black student populations of at least sixty per cent at the present time." and 62, "These practices contributed to the racial isolation of the schools". Perhaps it is a little outside of the issues in this case, Mr. Francis, but is it true

* * *

Q. So then is it fair to say when you had your full work force here it was just during those two months?

A. Yes. I had a core group that was here with me the majority of the other time.

Q. All right. Could you approximate the number of man hours of investigation that went into this, that ultimately resulted in your report?

A. Thousands of man hours. I really, - we had to sit down and figure it out once and it really was a substantial amount of time and it ran, I think cost-wise, over a million dollars worth of man hours.

Q. How many, - one step at a time, - you first talked about the optional school situation. In respect to the number of whites that availed themselves, - excuse me, - strike that. How many optional zones were we talking about?

A. There are three major ones that are outlined in the report. There were four that were in effect. The fourth one was almost inactive.

Q. Okay. Well, if I, - although there is nothing on the map to indicate a legend over here, but apparently these diagonal lines indicate optional zones.

A. Yes. Yes, they do.

* * *

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violation as noted by the Office of Civil Rights staff, so that is where the tie-in is.

Q. In other words --

A. It is not, - it is actually a compilation of the data pertaining to that particular subject and not the report itself.

Q. In other words, what you are saying is in Mr. --

A. Seitzer.

Q. -- Seitzer's letter stating in effect that the staff and teacher composition of the School Board was in violation of certain HEW regulations?

A. Title 6 of the Civil Rights Act.

Q. Title 6. That wasn't determined as a result of your report?

A. The information was gleaned from my report.

Q. Fine. Okay. Fine, so that based on your report, based on the information that was gleaned from your report, somebody in HEW saw fit to either deny funds or threaten to deny funds because of the racial imbalance on the staff and composition of the teaching staff, right?

A. That is the provision of that particular act.

Q. Okay. My next question is that as a result of you

* * *

investigation revealed contributed to this disproportion?

A. Maybe you can restate that for me.

Q. All right. You have testified that your investigation revealed --

A. Yes.

Q. That the central staff and the teaching staff, and if I might for sake of expediency --

A. Administrative staff as opposed to --

Q. Teaching, let's say, the staff, and that will include central office staff and teachers as well, that the staff of the Board of Education was racially speaking disproportionate to the student population or the city-wide population, you found that to exist, right?

A. Okay. The Buffalo schools, - yes.

Q. Now, my question is to you what affirmative policy or stated policy of the Board, if any, did your investigation reveal contributed to this disproportion?

A. First of all, I wouldn't consider it an affirmative policy, but there was no particular policy that attributed or tended to cause this disproportion.

Q. You found no such stated policy or written policy or rule or regulation promulgated by the Board of Education

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that brought this into effect?

A. I am still confused. If the Board came out with a policy that was limiting the number of minority --

Q. Exactly.

A. Things, minority administrators as well as teachers, it would be an out and out discriminatory statement and I don't think you are going to find too many discriminatory statements made --

Q. All right.

A. -- that are a matter of voted record.

Q. Okay, fine. You found none then; that is your answer?

A. Right.

Q. But you did find that the lack of the type of recruitment program that you would like to see was in fact missing?

A. There was a lack of action, period.

Q. Okay, so that it was really, - what you are saying, it was really their inaction that you found to substantially contribute to this disproportion on the staff, right?

A. Inaction could be applied to almost any area.

MR. GREGORY: All right. I have no more questions. Thank you.

* * *

received in evidence.)

THE COURT: Mr. Caldwell is next?

MR. SCHWARTZ: Yes, he is, your Honor.

THE COURT: Mr. Schwartz?

MR. SCHWARTZ: Yes.

THE COURT: I am just trying to make my plans here. About how long do you think you will be with Mr. Caldwell on direct?

MR. SCHWARTZ: About five minutes.

THE COURT: Not very long. All right.

* * * * * * * * * *

FRANK L. CALDWELL (709 Crawford Avenue, Syracuse, New York), a witness called by and in behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SCHWARTZ:

Q. Mr. Caldwell, what is your present occupation?

A. I am a member of the New York State Board of Parole.

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Q. And was there a time when you lived in the City of Buffalo?

A. Yes. I lived here from 1950 until 1963.

Q. Okay. Did you live in Buffalo in, - well, that means you lived in Buffalo in 1958?

A. Yes.

Q. Now, during 1958 or sometime preceding there, that time, did you learn of a plan by the Board of Education to build a junior high school in the City of Buffalo?

A. Yes, I did.

Q. And do you know what that junior high school ultimately became?

A. I believe it is the present Woodlawn Junior High School.

Q. Now, did you hear at that time about where the school was going to be placed?

A. Yes, on or near the then existing Offerman Stadium. I believe it was Woodlawn Avenue, Masten Avenue, in that particular area.

Q. Now, with respect to that, did you have an opinion as to the appropriateness of that location for that school?

A. Yes, I did.

Q. Did you make that opinion known to the School Board?

A. I did.

Q. What was that opinion?

A. I opposed the location of the school where it was planned.

Q. For what reason?

A. I felt that highest priority in the location of any school should be the quality of education which it would produce after its construction and I felt that if the school was built as planned on the Offerman Stadium site that it would necessarily be a racially segregated school by reason of the then existing residential patterns in the City of Buffalo.

MR. GREGORY: Excuse me, if I may, your Honor, I am going to object and ask that answer be stricken on the grounds that Mr. Caldwell has not at this time at least, been qualified as an educational expert to the extent that he can give an opinion that any school should be located in such a situation as it afforded the best quality education possible.

* * *

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THE COURT: Excuse me, Mr. Gregory, please. Mr. Walsh, please let your record indicate Exhibit 32 is now marked in evidence. Mr. Sedita, could you hand it up to Mr. Walsh so he can put his mark on it?

BY MR. SCHWARTZ:

Q. Do you recall going to the Board meeting and speaking?

A. Very, very vaguely.

Q. Well, do you remember going to a Board meeting and speaking on the subject?

A. I remember going to a Board meeting.

Q. Would it refresh your recollection at all if I told you that that meeting occurred on December 10, 1958?

A. It would refresh my recollection insofar as the date is concerned, sir.

Q. Okay. It was approximately at that time then?

A. Good.

Q. You primarily went there to object to the site of the new proposed school, is that right?

A. That's my recollection.

Q. And it was your understanding that the Board of Education was going to propose to the Common Council that they acquire the old Offerman Stadium site?

A. I don't know about the acquisition. It was my understanding that they were going to build the school on the Offerman Stadium site.

Q. All right, fine, put it that way then. At that particular time the school hadn't even gone under construction, right?

A. I believe that's right.

Q. All right, and yet you objected to the site?

A. Vehemently.

Q. On the grounds, as you stated, that the school would not have afforded quality education in your opinion to the students who attended?

A. That's right.

Q. And yet is it not a fact at that particular time the boundary districts for that school were drawn?

A. I didn't believe that they could draw boundaries that would produce quality education on that site.

Q. When you say it couldn't produce quality education, am I right that you meant you felt they couldn't in fact have an integrated school there?

A. You are right on that subject.

Q. Okay, and yet you felt that they couldn't have an

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integrated school because there was no way possible for them to contrive boundaries?

A. No way. I am restating your statement, no way under the sun.

MR. GREGORY: That is all.

THE COURT: Thank you, Mr. Caldwell. Do you have a witness?

MR. SCHWARTZ: I have Dr. Lydia Wright.

MR. GRIFFIN: Before we call the next witness can we approach the bench concerning scheduling problems?

THE COURT: We have no jury. We do not have to be secretive about these things.

MR. GRIFFIN: Again that is right, but you will be taking another matter for a while.

(Off the record conference had at the bench between Court and counsel.)

* * * * * * *

LYDIA T. WRIGHT (633 Humboldt Parkway, Buffalo, New York), a witness called by and in behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. SCHWARTZ:

Q. Dr. Wright, what is your occupation?

A. I am a pediatrician. I am a pediatrician.

Q. Now, did there come a time during the last, oh, ten or fifteen years when you were a member of the Buffalo Board of Education?

A. Yes. I served on the Buffalo Board of Education from May of 1962 to May of 1967.

Q. During this period, did the Board deal with problems of racial balance and racial integration in the schools? Did the Board take up questions of racial balance and racial integration?

A. Yes, they did.

Q. Did there come a time when the question of the districting for the Woodlawn School came to the attention of the Board?

A. Yes.

Q. Can you recall roughly when that was, or precisely,

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if you can?

A. Well, I can't tell you exactly, but all the Board members were aware of the fact that Woodlawn Junior High School was to open in September of 1964 and in September of 1963 we received a directive from Commissioner Allen asking us to indicate to the State Education Department the extent of racial imbalance in the Buffalo Public School System and to also indicate what steps that we would take to eliminate racial imbalance and with that background and with the opening of Woodlawn coming up in September, we all knew that sometime during the school year 1963-64 we would have to draw up the district lines.

Q. Now, a series of plans were proposed by different members of the Board and by Dr. Manch, is that correct?

A. Yes. First a series of plans was proposed by Dr. Manch and a series of plans were proposed by the members of the Board.

Q. Now, you proposed a plan among them, isn't that correct?

A. Yes, I did.

Q. Okay. Now, the plan that you proposed, can you tell us what population proportions by race would have been produced had your plan been adopted or were likely to have been produced.

A. Yes. Had the plan, the first plan that I proposed been accepted there would have been a --

Q. May I for a moment, the first plan is referred to on Page 12 of the stipulation, sub-paragraph 5.

A. May I refer to this newspaper article?

Q. Yes, you may.

THE COURT: Excuse me. What stipulation number is this?

MR. SCHWARTZ: I don't know the number, your Honor, but it is on Page 12, small Roman five. It is stipulation Paragraph 26(a)(5), at the bottom of Page 12.

THE COURT: All right.

THE WITNESS: The first plan that I proposed would have resulted in a school enrollment at Woodlawn of 1426 pupils with roughly thirty-six per cent Negro and sixty-four per cent white and the second plan that I proposed would have resulted in forty-one per cent Negro and fifty-nine per cent

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white.

BY MR. SCHWARTZ:

Q. And that plan, of course, was not adopted?

A. Of course not.

Q. Now, Mr. Parlato had proposed a plan which is described on small Roman II on that Page 12, is that correct?

A. I don't have that page.

Q. Oh, I am sorry. Mr. Parlato said his preference was for a district consisting of Schools 8, 16, 17 and part of 74?

A. Yes.

Q. This would mean a school almost entirely Negro, you recall that?

A. That's correct.

Q. Now, the plan that was ultimately proposed, could you tell us roughly to which plan that was most similar of those that had originally been proposed?

A. Mr. Parlato's plan.

Q. I see. Now, does the Board when it makes decisions like this usually make these decisions in advance at a conference meeting or a caucus or something?

A. Yes, we do.

Q. When did you first hear that the plan that was ultimately adopted would in fact be adopted, if you could tell us that?

A. Well, I have to give you a little background.

Q. If you would.

A. Because I actually didn't hear about this plan as a final plan until it got into the public meeting in the Common Council chambers on March 26, 1964.

Q. That was the date on which the plan was ultimately adopted?

A. That's right, but we had a conference meeting that morning at which no plans were discussed, but as we were leaving the conference room, Mr. Mitkowski said to Mr. Rubino, "I would like to propose a motion in respect to the districting of Woodlawn", and Mr. Economou turned to Mr. Mitkowski and said, "But I thought we were all in agreement", and Mr. Rubino said to Mr. Mitkowski, "Don't worry about Tony. He knows what we are going to do", so at that point I had an inkling that the Board members went behind my back with a plan. In fact, when we got into the Board meeting, Mr. Parlato presented his plan, Dr. Manch said that he had just heard about the plan by

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accident the day before, but yet he was able to give a written statement that was about ten pages long in support of the plan.

Q. Now, at the meeting Mr. Nitkowski proposed an additional plan, isn't that correct?

A. Yes. It was one I had talked about frequently in our private conferences and that was one to the effect that since the community had been allowed to become so polarized over the districting of Woodlawn, it might not be a bad idea to change our plans and use Woodlawn Junior High School as a senior high school and use the present Lafayette High School as the junior high school because there was a lot of protest based on the fact that the people on the West Side did not want their children, their small children crossing Main Street, so this would make high school students cross Main Street and white junior high school students would be in their own neighborhood and the black junior high school students would cross Main Street and the black people in our neighborhood had no objection to this because already little elementary school children were crossing Michigan and Main to go to 16 School.

Q. Would those two schools have been schools which would have come close to reflecting the racial composition of the Buffalo School population which at that time was about 70-30, 65-35?

A. I don't have figures before me, but this was the basis of my decision for this proposal.

Q. Was that plan discussed by the Board?

A. Only to the extent to say that it is not feasible.

Q. Were any reasons given why it was not feasible?

A. Dr. Manch said it was not feasible because the staff couldn't get it ready for September.

Q. I see, and it was not adopted?

A. Of course not.

Q. Now, just one moment, your Honor. Now, was there strong community hostility on the part of white members of the community to the plans that you proposed which would have made it a majority white school?

A. I would say no. I think that the, - to the best of my recollection, many white people supported my plan because they would be in the majority in that school. They feared being in a school in which they would be in the minority.

Q. I see. Was the opposition, - was there opposition to

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the other plans in which white children would have been in the minority?

A. Yes.

Q. Now, when the school opened, what was the racial composition as a result of the plan that was adopted?

A. I believe it was over ninety-nine per cent black.

Q. Now, you were on the Board, - strike that. During much of the time that you were on the Board, other members of the Board were Mr. Carmelo Parlato and Mrs. Alfreda Sminski, is that correct?

A. That's correct.

Q. Did you form an opinion of their views on racial integration in the Buffalo School System?

MR. GREGORY: I object to that question.

THE COURT: I will permit it. Overruled.

THE WITNESS: I wouldn't want to be judgmental about anybody else's motivations.

MR. SCHWARTZ:

Q. I didn't ask the motivations; just their views.

A. But by their actions one could gather that they, - well, I don't want to, - what is an euphemism for racist? Well, let me just tell you some of the things that they did.

Q. Perhaps that would be the best way.

A. They consistently opposed racial balance as a desirable educational goal. They opposed selecting school sites that would enable integration. They opposed the voluntary transfer plan. They opposed the designating of sending schools to facilitate integration. They opposed a plan that I proposed to specialize in the high schools much like our vocational schools so that we could have children with, - from, - with homogeneous interests from heterogeneous backgrounds coming into one school. For example, designating one school as a math science school so that all the peoples all over the city who were interested in math and science could come together and they would be from various backgrounds, and they opposed that plan. Of course, they opposed integrating Woodlawn. They just opposed everything that had to do with racial balance. They were strong advocates of the neighborhood school system and strong advocates of compensatory education.

MR. SCHWARTZ: Thank you, Dr. Wright.

THE COURT: Mrs. Coon? Mr. Gregory.

* * *

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Ewald P. Nyquist, Commissioner
of Education et al

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City of Batavia)

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I, Leslie R. Johnson being duly sworn, say: I am over eighteen years of age and an employee of the Batavia Times Publishing Company, Batavia, New York.

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Leslie R. Johnson

Sworn to before me this

5th day of April, 1977

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1978

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*

Leslie R. Johnson

Sworn to before me this
5th day of April 1977

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1972

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